SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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Application of HILDA KOGUT, ROBERT E. ASSELBERGS and MAGALI DUPUY,

VERIFIED PETITION

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules and a Declaratory Judgment Pursuant to Section 3001 of the Civil Practice Law and Rules

Index No.

-against-

THE VILLAGE OF CHESTNUT RIDGE, THE BOARD OF TRUSTEES OF THE VILLAGE OF CHESTNUT RIDGE, ROSARIO PRESTI, JR. in his capacity as the Mayor and Trustee of and for the Village of Chestnut Ridge, GRANT VALENTINE in his capacity as the Deputy Mayor and Trustee of and for the Village of Chestnut Ridge, and HOWARD COHEN, RICHARD MILLER, and PAUL VAN ALSTYNE, in their capacities as Trustees of and for the Village of Chestnut Ridge,

Respondents-Defendants.

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Petitioners-Plaintiffs, HILDA KOGUT, ROBERT E. ASSELBERGS and MAGALI DUPUY, by and through their attorney, Steven N. Mogel, Esq., as and for their Verified Petition and Complaint allege as follows:

1. This hybrid proceeding is commenced pursuant to CPLR §3001 and Article 78 of the Civil Practice Law and Rules seeking, *inter alia*:

   a. to vacate and annul the Negative Declaration under the State Environmental Quality Review Act ("SEQRA") issued by the Board of Trustees of the Village of Chestnut Ridge of January 15, 2019 ("Neg Dec") pertaining to a local law entitled "A Local Law Amending Local Law No. 20 of 1987, the Zoning Law of the Village of Chestnut Ridge, with regards to Residential Places of Assembly and

Houses of Worship" ("House of Worship Law") as same was arbitrary and capricious; and

b. a declaratory judgment declaring that the House of Worship Law is null and void as the lead agency failed to comply with the requisite procedures under SEQRA; and

c. a declaratory judgement that the House of Worship Law is null and void for failure to comply with General Municipal Law 239; and

d. a declaratory judgment that the House of Worship Law is null and void as it was not passed in accordance with Village of Chestnut Ridge local law Article XVII: Amendments, §1 and 2; and

e. a declaratory judgment that the House of Worship Law is null and void as it is was passed in reliance upon a municipal resolution that contained materially false and derogatory information.

THE PARTIES

2. At all times hereinafter mentioned, Petitioner-Plaintiff HILDA KOGUT (hereinafter "Petitioner Kogut"), was and is an individual residing at 20 Pine Knoll Court, which residence is situated within the jurisdictional limits of the Village of Chestnut Ridge ("Village").

3. At all times hereinafter mentioned, Petitioner-Plaintiff ROBERT E. ASSELBERGS (hereinafter "Petitioner Asselbergs"), was and is an individual residing at 6 Crown Court, which residence is situated within the jurisdictional limits of the Village.

4. At all times hereinafter mentioned, Petitioner-Plaintiff MAGALI DUPUY (hereinafter "Petitioner Dupuy"), was and is an individual residing at 49 Spring Hill Terrace, which residence is situated within the jurisdictional limits of the Village.

5. At all times hereinafter mentioned, Respondent-Defendant VILLAGE OF CHESTNUT RIDGE ("Village") was and is a municipal corporation situated in the Town of Ramapo, County of Rockland and State of New York.

6. At all times hereinafter mentioned, Respondent-Defendant THE BOARD OF TRUSTEES OF THE VILLAGE OF CHESTNUT RIDGE ("Village Board") was and is the elected legislative body, consisting of a mayor and four trustees, for the Village.

7. At all times hereinafter mentioned, Respondent-Defendant ROSARIO PRESTI, JR. ("Respondent Presti") was and is the mayor and chief executive officer of the Village.

8. At all times hereinafter mentioned, Respondent-Defendant GRANT VALENTINE ("Respondent Valentine") was and is the deputy mayor and a trustee of the Village.

9. At all times hereinafter mentioned, Respondent-Defendant HOWARD COHEN ("Respondent Cohen") was and is a trustee of the Village.

10. At all times hereinafter mentioned, Respondent-Defendant RICHARD MILLER ("Respondent Miller") was and is a trustee of the Village.

11. At all times hereinafter mentioned, Respondent-Defendant PAUL VAN ALSTYNE ("Respondent Van Alstyne") was and is a trustee of the Village.

INTRODUCTION

12. The subject matter of the instant litigation is one that could not be nearer or dearer - or perhaps more emotionally fraught - to a citizen of the United States: the issue of religion and the freedom to worship as one pleases.

13. However, the ***substance*** of the instant litigation is prosaic – the failure of the Village of Chestnut Ridge to adequately, or even cursorily, evaluate the potentially significant adverse impacts upon the environment of a wide-ranging local law that touches nearly every corner of the Village, and potentially impacts several neighboring communities as well.

14. As is set forth in detail, *infra,* throughout the presentation and passage of the House of Worship Law, significant adverse environmental impacts with regard to parking, stormwater management, traffic circulation and safety, pedestrian safety, community character, compatibility with existing land uses, water and sewer usage, police, fire, ambulance, sidewalk systems, etc. have been highlighted by planning professionals, elected officials in neighboring communities, and by the Village's ***own planning board.***

15. Despite the multiplicity of concerns, the Village instead elected to conduct no formal environmental evaluation at all, stating quixotically and in direct opposition to the requirements of SEQRA that it was the responsibility of the opponents of the House of Worship Law to do so, and instead choosing to rely upon such "evidence" as purported conversations with unnamed "elected officials and building department staff" in selected neighboring communities in support of their counter-intuitive determination that the House of Worship Law will not have any significant adverse environmental impact at all.

16. Though fully aware of the breadth and depth of negative impacts upon the environment of the House of Worship Law, the Village has done worse than turn a blind eye. They have shrouded all legitimate criticism of the environmental impacts of this poorly-conceived law in the cloak of anti-Semitism and hatred, and have exacerbated and encouraged the divisions within the community by specifically excoriating only those of their constituents that are opponents of the House of Worship Law at public meetings, publicly naming, shaming, selectively quoting, and slandering them in an official municipal resolution, and shamelessly passing judgment upon them.

17. Notwithstanding the Village's behavior, the fact remains that the House of Worship Law is not null and void due to the Village's reprehensible attempt at misdirection by making

support of this local law a litmus test of one's support for religious freedom and tolerance, or even for its odd choice to pass the House of Worship Law, then immediately commence the process of preparing a comprehensive plan, rather than the other way around as urged by planning professionals, neighboring communities, the Village's planning board, and many members of the public. The House of Worship Law is null and void for, *inter alia*, neglecting to take a "hard look" at the environmental impacts identified by experts, and which logically flow, from the passage of the law as required by SEQRA.

18. The Village has failed to comply with SEQRA and has vilified all those who oppose them in the passage of the House of Worship Law, no matter the reason. In so doing, the Village has both produced a local law which is *void ab initio,* and has also profoundly failed in its primary function: to represent the interests of all of the residents of the Village of Chestnut Ridge.

Standard of Review:

19. It is well-established that the standard for judicial review of SEQRA determinations is that same as that for administrative decisions generally, i.e., "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion." CPLR 7803(3); Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d 400, 416 (Ct of Appls 1986) (citations omitted).

20. As stated by the Court of Appeals in Jackson:

> ". . . [I]t is not the role of the courts to weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally and substantively.
>
> More particularly, . . . courts may, first, review the agency procedures to determine whether they were lawful. Second, we may review the record to determine whether the agency identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration" of the basis for its determination."

Id. at 416-417 (citations omitted).

Timeliness:

The instant action is unquestionably timely, as it is brought less than four (4) months from the date of the Village Board's final determination upon the House of Worship Law.

21. Pursuant to CPLR §217, the statute of limitations for bringing an Article 78 proceeding is four (4) months, [u]nless a shorter time is provided in the law authorizing the proceeding."

22. New York State Village Law does not provide for a shorter time period for challenges to the actions of a Village Board in amending local zoning laws, nor does the Village of Chestnut Ridge shorten the statute of limitations in the local law governing amendment to the zoning law, i.e., Village of Chestnut Ridge local law Article XVII: Amendments.[1]

23. The House of Worship Law was passed by the Village Board on February 22, 2019.[2]

24. The instant action, therefore, is timely.

[1] Village of Chestnut Ridge Article XVI pertaining to Village Board Special Permits limits the filing of an Article 78 proceeding for "any decision of the Village Board hereunder" to "thirty (30) days of the filing of the decision in the office of the Village Clerk." This, however, clearly applies by its explicit terms (i.e. "hereunder") only to challenges to any decision of the Village Board pertaining to Special Permits. Even assuming, *arguendo,* that this limitation could apply to the House of Worship Law, same remains timely, as it is filed less than thirty (30) days from the date the House of Worship Law became effective, or even was passed by the Village Board.

[2] The Court may determine that the statute of limitations upon a challenge to the Neg Dec and House of Worship Law began to run upon the effective date of the law. The House of Worship Law became effective, pursuant to its terms, upon filing with the New York State Department of State, and same was stamped "filed" with the Department of State on March 5, 2019. This question is academic, however, as regardless of whether the statute of limitations began to run on February 22, 2019 or March 5, 2019, this action is timely.

Ripeness:

The instant controversy is ripe for judicial review, as it is brought subsequent to the Village Board's final determination upon the House of Worship Law.

25. An Article 78 proceeding may not be used to challenge a nonfinal determination by a body or officer. CPLR §7801(1).

26. With regard to the instant proceeding, the issuance of a negative declaration would be considered a nonfinal determination and, therefore, not ripe for review until the Village Board completed the decision-making process, i.e., by passage of the House of Worship Law. See Town of Yorktown v. New York State Dep't of Mental Hygiene, 92 A.D.2d 897, 898, aff'd, 59 N.Y.2d 999 (2nd Dep't 1983); Save the Pine Bush, Inc. v. City of Albany, 117 A.D.2d 267, 269, (3rd Dep't 1986), aff'd as modified sub nom. Save Pine Bush, Inc. v. City of Albany, 70 N.Y.2d 193 (1987); Young v. Bd. of Trustees of the Vill. of Blasdell, 89 N.Y.2d 846 (Ct of Appls 1996).

27. Therefore, the negative declaration issued in the instant action and discussed in detail *infra*, became ripe for judicial review on February 22, 2019, the date of passage of the House of Worship Law.

Standing:

Petitioners all have standing to bring the instant action, as they are the owners of property that is the subject of substantial changes in permissible uses.

28. With regard to zoning litigation in general, it is well-established that adjacency to the property that is the subject of the zoning issue confers standing, as proximity places the challenging party within the "zone of interest" and a presumptive injury in fact, thereby obviating the need to show special damages. See Sun-Brite Car Wash, Inc. v. Board of Zoning and Appeals of Town of North Hempstead, 69 N.Y.2d 406, 414-415 (Ct of Appls 1987).

29. With regard to challenges under SEQRA, the injury to be pled must also be "environmental and not solely economic in nature." Mobil Oil Corp. v. Syracuse Indus. Dev. Agency, 76 N.Y.2d 428, 433 (Ct of Appls 1990).

30. However, it is similarly well-established that the owners of property that is the subject of rezoning have standing, without the need to demonstrate individual environmental harm.

31. For example, in Har Enterprises v. Town of Brookhaven, 74 N.Y.2d 524 (1989), the Court of Appeals found that the owners of property that would undergo a change in zoning would have standing to bring suit for procedural non-compliance with SEQRA. The Court of Appeals stated:

> "In deciding whether an owner has standing to ask a court to review SEQRA compliance, the question is whether it has a significant interest in having the mandates of SEQRA enforced. An owner's interest in the project may be so substantial and its connection to it so direct or intimate as to give it standing without the necessity of demonstrating the likelihood of resultant environmental harm. For even though such an owner cannot presently demonstrate an adverse environmental effect, it nevertheless has a legally cognizable interest [] in being assured that the decision makers, [] before proceeding, have considered all of the potential environmental consequences, taken the required 'hard look', and made the necessary 'reasoned elaboration' of the basis for their determination."

Id. at 529; see also Gernatt Asphalt Products, Inc. v. Town of Sardinia, 87 N.Y.2d 668, 678 (Ct of Appls 1996).

32. The Petitioners herein are the owners of property whose zoning has been radically altered, including the creation of entirely new uses (described *infra)* that have the potential for significant adverse environmental impacts.[3] The Petitioners could not be said to have any more

[3] It is worthy of note that the Court of Appeals in Sun-Brite cautioned against overly technical applications of standing principles, finding that: "Standing principles, which are in the end matters of policy, should not be heavy-handed; in zoning litigation in particular, it is desirable that land use disputes be resolved on their own merits rather than by preclusive, restrictive standing rules . . ." Sun-Brite Car Wash, Inc. v. Board of Zoning and Appeals of Town of North Hempstead, 69 N.Y.2d at 413 Ct of Appls 1987).

"direct or intimate" connection to the property they own; the property at issue are their very homes.

33. Petitioners therefore, have standing herein.

BACKGROUND

Zoning Law for Places of Worship in the Village of Chestnut Ridge Prior to Passage of the House of Worship Law

34. Since the passage of Village Local Law 6 of 2001, "churches and similar places of worship" (hereinafter "Places of Worship") have been designated as a permitted use, by special permit of the Village Board, in each and every residential zone in the Village (save one).[4] Places of Worship are categorized as "use group 'c,'" setting forth a minimum lot area of five (5) acres, among other bulk requirements. Local Law 6 of 2001, the Tables of General Use Requirements for the Village, and the Table of Bulk Requirements are annexed hereto as Exhibits "1" through "3," respectively.

35. The issuance of special permits by the Village Board are governed by Article XVI of the Village's Zoning Law ("Zoning Law"). A copy of Article XVI of the Code is annexed hereto as Exhibit "4"

House of Worship Law: Presentation, Public Hearings, and Passage

. . .

Village Board Meeting of February 22, 2018

36. A draft House of Worship Law was first presented to the public at a Village Board meeting held on February 22, 2018. This item was added to the agenda of the February 22, 2018 meeting no earlier than February 20, 2018, a mere two (2) days before the meeting was held.

[4] Churches and similar places of worship were not listed as a permitted use in the RSH (Specialized Housing Residential District) zone. The RSH zone has no designated uses permitted by right or as a conditional use by the Village's Planning Board. The only permitted uses in the RSH zone are uses by special permit for senior citizen and

37. After public comment, Resolution No. 2018-17 was passed, referring the proposed House of Worship Law to the Rockland County Planning Board and neighboring communities, as required under the General Municipal Law, and to the Village's Planning Board, as required under Village of Chestnut Ridge Article XVII: Amendments, §1.

38. At the February 22, 2018 meeting, the Village also made available to the public a memorandum introducing the draft House of Worship Law from Maximilian Stach, AICP of the firm of Nelson, Pope & Voorhis, LLC ("Village Planners") dated February 9, 2017,[5] ("2/9/17 Nelson Memorandum"). A copy of the 2/9/17 Memorandum is annexed hereto as Exhibit "5."

39. The 2/9/17 Memorandum began by stating that the Village's planners had been "directed by the Board of Trustees . . . to revise the Village's code with the purpose of reconciling it with Federal and State law regarding the zoning of religious uses," specifically citing the requirements of the Religious Land Use and Institutionalized Persons Act ("RLUIPA").

40. The 2/9/17 Nelson Memorandum continued:

> "In drafting the following proposed regulations, we have considered the input of Brooker Engineering who has been retained by the Orthodox Jewish Coalition (OJC) to represent their interests. We have met with Liz Mello, P.E. and Stuart Strow, P.E. of Brooker Engineering to discuss their concerns . . ."

41. The Village's Planners proposed amending the existing Zoning Law of the Village, to create, permit, and regulate three categories of places of worship, to wit: (a) Residential Places of Worship (RPW); (b) Neighborhood Places of Worship (NPW); and (c) Community Places of Worship (CPW).

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physically handicapped housing development and their designated accessory uses. Churches and similar places of worship were not listed as permitted uses in the Village's commercial zones (NS, PO, LO, PI, and RS).

[5] Respondent Presti stated, on April 26, 2018, that the date upon the 2/9/17 Nelson Memorandum was a typographical error and the aforesaid document should not have been identified as having been drafted in 2017. See *4/26/18 Minutes 4-5*.

42. Both RPWs and NPWs were entirely new categories of land uses.

43. RPWs would be permitted in all zones of the Village in structures as small as single-family residences upon non-conforming, undersized lots (up to 20% smaller than the minimum lot size for a single-family residence in the zone). Among other concessions and conditions, RPWs were permitted:

a. to use up to 50% of the gross floor area for religious assembly purposes;

b. to post a sign advertising the RPW;

c. to operate seven days a week, and all hours of the day (except between the hours of 12:00a.m. and 6:00a.m., which operation would be permitted "only" up to three times per year); and

d. to utilize both on-site and off-site parking to accommodate its users.

44. NPWs would also be permitted in all zones in the Village in structures as small as single-family residences, upon the minimum lot size for single-family residences in the zone. NPWs could be up to 10,000 square feet in size. As with RPWs, NPWs were permitted:

a. To post a sign advertising the NPW;

b. to operate seven days a week, and all hours of the day (except between the hours of 12:00a.m. and 6:00a.m., which operation would be permitted "only" up to three times per year);

c. to allow occupancy of the structure for the maximum number of persons permitted under NYS fire and building codes; and

d. to utilize both on-site and off-site parking to accommodate its users.

45. Despite being able to be located in single-family residential neighborhoods, NPWs were also permitted to incorporate a variety of accessory uses, such as classrooms, social halls, administrative offices, bath and shower facilities, gymnasiums and indoor recreation facilities.

First Rockland County Department of Planning GML Review

46. Pursuant to General Municipal Law 239-L and 239-M, the proposed House of Worship Law was referred to the Rockland County Department of Planning ("RC Planning"), with an acknowledged "received" date thereupon of February 23, 2018.

47. RC Planning issued its response dated March 26, 2018 ("3/26/18 GML Review") recommending, *inter alia*, the following modifications to the House of Worship Law:

> "4. In order to ensure the safety of pedestrians, off-site parking for residential houses of worship must be subject to the availability of sidewalks or suitable walkways between the subject properties."

48. A copy of the 3/26/18 GML Review is annexed hereto as Exhibit "6."

Town of Clarkstown Department of Planning Review

49. By correspondence dated April 26, 2018, the Town of Clarkstown Department of Planning submitted the results of their review of the proposed House of Worship Law ("Clarkstown GML Review") and adopted the following comment:

> "The Planning Board's concerns center around pedestrian safety, traffic and parking. As such, the Board concurs with the recommended modifications of the Rockland County Planning Department. Comments 3 and 4, in particular, recommend explicitly requiring all necessary parking be provided and carefully considering the availability of sidewalks or walkways in relation to these uses."

A copy of the Clarkstown GML Review is annexed hereto as Exhibit "7."

Village Board Meeting of April 26, 2018

50. The draft House of Worship Law was placed upon the April 26, 2018 Village Board agenda ("4/26/18 Agenda") for the stated purpose of setting a public hearing thereupon.

51. At the aforesaid meeting during public comment, the undersigned urged the Village Board to immediately designate the proposed action as a Type I under SEQRA pursuant to 6 NYCRR 617.4(b)(2), which requires designation of any action as a Type 1 if said action involves "the adoption of changes in the allowable uses within any zoning district, affecting 25 or more acres of the district."

52. As would be repeatedly stated to the Village over the coming months, in writing and verbally, the adoption of the House of Worship Law would affect over ninety (90%) percent of the geographic area of the Village. See *Minutes of the 4/26/18 Village Board Meeting* ("4/25/18 Minutes") *4*, a portion of which is annexed hereto as Exhibit "8."

53. The undersigned further submitted a report dated April 25, 2018 prepared by Alan J. Sorensen, AICP, Planning Consultant with Planit Main Street, Inc. ("4/25/18 Planit Report"), a copy of which is annexed hereto as Exhibit "9."

54. In analyzing the draft House of Worship Law, the 4/25/18 Planit Report identified at least four (4) major categories, as set forth in the standard full environmental assessment form ("FEAF"), in which the proposed legislation would likely have significant adverse environmental impacts, i.e., Aesthetic Resources, Consistency with Community Plan, Community Character, and Transportation.[6]

[6] See 4/25/18 Planit Report 1, *Summary.*

55. The primary[7] significant adverse environmental impacts upon Aesthetic Resources were identified by the 4/25/18 Planit Report as deriving from the absence of any regulation to "limit the proliferation of Neighborhood Places of Worship (NPW) throughout residential neighborhoods." "As written," continues the report, "the Proposed Action could result in multiple NPW on every residential block," resulting in the transformation of residential yards into "parking lots" and the removal of trees from tree-lined streets for new sidewalks to accommodate greatly increased pedestrian foot traffic. *4/25/18 Planit Report 2.*

56. The 4/25/18 Planit Report identified several potentially significant adverse impacts related to Community Character with regard to RPWs, most notably the impact of permitting RPWs with exponentially higher regular occupancy than a standard single-family residence, packed into one-half of the area of a single-family residence.

57. As stated by Mr. Sorensen:

> "The *cumulative impact* of like uses being situated throughout the residential neighborhoods of the Village would fundamentally change the character and quality of life of the Village's quiet residential streets. Residential neighborhoods are intended to be quiet places of respite for residents and their families where they can enjoy life before and after work. Neighborhoods are not intended to be places bustling with pedestrian and vehicular activity related to places of worship."

58. Such usage, continued Mr. Sorensen:

> " . . . will undoubtedly have negative impacts on neighbors, on-street parking, and the ability to enjoy quiet time at home. The principal intended use of neighborhoods is for residences and the introduction of non-residential activities on these streets would change the character of the neighborhood, even if the housing stock stayed the same. However, it is inevitable that the housing stock will need to change to accommodate the residential places of worship, thereby exacerbating the adverse impacts on the Village's neighborhoods."

[7] Permission to permit one freestanding monument sign for each Residential Place of Worship, as proposed, would "have a significant adverse visual impact on (sic) aesthetics resources." *Id at 2.*

59. The creation and establishment of NPWs would "fundamentally change the character of Chestnut Ridge" for the same reasons. However, NPWs would involve considerably greater potential adverse environmental impacts, given that they would permit a multiplicity of high-impact accessory uses such as classrooms, social halls, administrative offices, bath and shower facilities, gymnasiums and indoor recreation facilities. These accessory uses, in particular, "pose potentially significant adverse impacts related to noise, light pollution, parking, transportation and community services . . . The interconnectivity of the potential adverse impacts (e.g., aesthetics, parking, transportation, and community services) will render the Village of Chestnut Ridge unrecognizable from what it is today."

60. With regard to Community Services and Transportation, the 4/25/18 Planit Report identified the fact that "Houses of Worship by their very nature result in regular assemblages of people that result in traffic (vehicular and pedestrian) related impacts, needs for off-street and on-street parking, impacts related to noise and an increase in the demand for community services" as potentially significant adverse impacts. Again, the range of accessory uses permitted with NPWs would amplify these adverse impacts. The 4/25/18 Planit Report continues:

> "Wedding receptions and other social functions would be allowed. Each and every one of these facilities has the potential to generate significant increases in traffic, the demand for off-street and on-street parking, and the need to expand the existing sidewalk system.
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> A single Community Place of Worship has the potential to exhaust the transportation and on-street parking system during a wedding or reception . . . Social halls, wedding receptions and social events carried out as accessory uses to Houses of Worship will also place an increased demand on transportation, water, sewer, police, ambulance and fire protection services as the result in the mass gathering of people for such purposes. This is an area where the Proposed Action must be studied in great detail in a DEIS, which would include an analysis of potentially significant cumulative impacts and the required mitigation measures."

Id at 3-4.

61. With regard to Consistency with Community Plan, the 4/25/18 Planit Report explained to the Village that, pursuant to NYS Village Law §7-722, zoning must be crafted "in accord with a well-considered plan" or "in accordance with a comprehensive plan." The Village has no formal comprehensive plan, but the House of Worship Law evidenced no effort on behalf of the Village to make "even a cursory review of the . . . significant adverse impacts that the [House of Worship Law] presents to the Village of Chestnut Ridge." *Id. at 4.* The 4/25/18 Planit Report continues:

> "The Proposed Action would inevitably result in the demand for additional community services. The Proposed Action will encourage new non-residential development in neighborhoods, which will be inconsistent with predominant architectural scale and character. The Proposed Action will undoubtedly cause a change in density of development that is not supported by existing infrastructure (e.g., water, sewer, sidewalk, transportation) or is a distance from existing infrastructure (i.e. a House of Worship not situated near bus stops or public transit). . .
>
> Today, Chestnut Ridge is a community with single-family neighborhoods, which are distinct and separate from its small neighborhood business districts. The Proposed Action would allow the introduction of non-residential uses on every single residential block, thereby, destroying the character of these neighborhoods. The Proposed Action would fundamentally and forever change, the character of Chestnut Ridge and the quality of life for its residents.

Id.

62. In concluding, the 4/25/18 Planit Report reminded the Village Board as to its responsibilities pursuant to SEQRA; namely, to issue a positive declaration due to the potential for at least one significant adverse environmental impact and to prepare a draft environmental impact statement ("DEIS"). Mr. Sorensen added that the opportunity should be accorded the

public for a "scoping session" given the "scale of potential development, the density that would come with it, and the potential for staggering changes in the quality of life in the entire Village."[8]

May 29, 2018 Memorandum

63. By memorandum dated May 29, 2018 ("Village PB Memo"), a copy of which is annexed hereto as Exhibit "10," the Village's Planning Board presented the results of its review of the draft House of Worship law.

64. The Village PB Memo introduced its detailed review with the following statement:

> "While the Planning Board recognizes that the Village Board feels the Zoning Code has to be amended to provide reasonable accommodation for the needs of religious uses, we feel the provisions of this Local Law have the potential to significantly disrupt the peaceful and quiet harmony associated with single family zoning districts and alter single family neighborhoods and impact the quality of life of the residents of the Village. A proliferation of houses of worship at the scale permitted by the Local Law will negatively impact homeowners by allowing for large structures to be built in single family zones. The associated parking issues, noise, and traffic can severely impact the neighboring single family dwellings, especially if more than one place of worship is sited on a single block."

Village PB Memo 1.

65. The Village Planning Board recommended that the House of Worship Law not be passed as a stand-alone law at all. Rather, the Village Planning Board recommended that the Village adopt a comprehensive plan and consider the needs purportedly sought to be addressed in the House of Worship Law, with the input of the entire Chestnut Ridge community, as part of this formal plan. *Id.*

66. The Village's Planning Board expressed concerns regarding environmental impacts also identified in the 4/25/18 Planit Report, including the absence of any limitation upon the number of Residential Places of Worship (RPW) that could be placed in any given area. The

[8] Scoping was not required under SEQRA at the time of the 4/25/18 Planit Report. The 2019 amendments to SEQRA now require public scoping should an EIS be required. See 6 NYCRR 617.8.

Planning Board recommended a "minimum distance" between RPWs be explicitly set forth in the law. *Id at 2.*

67. The Village Planning Board also echoed concerns identified in the 4/25/18 Planit Report regarding the number of persons to be permitted in an RPW for regular gatherings, stating that such occupancy will "alter the character of the neighborhood in a negative manner," resulting in the potential for a "public health and safety hazard." *Id. at 4.* Furthermore, permitting accessory uses such as social halls in Neighborhood Places of Worship (NPW), the Planning Board agreed, "will disrupt the single-family nature and character of a residential neighborhood on such small lots." *Id. at 4.*

68. In addition, the Planning Board raised other serious environmental concerns and questions regarding RPWs for the Village's consideration on their own including, but not limited to, the following:

a. The ability of the Village to enforce proposed limitations in the House of Worship Law as to the size of gatherings in RPWs. *Id. at 2.*

b. The *de jure* granting of a 20% lot size area variance over that permitted for a single-family home and a development coverage bonus of 10% over that permitted for a single-family home to each and every RPW, which would "allow substantially larger houses on smaller lots."[9] *Id.*

c. The "total consensus" of the Village Planning Board that all parking for an RPW be on-site. Parking off-site, particularly if on the street, has the "potential to significantly disrupt a neighborhood . . . impede traffic flow and

[9] To that end, the Planning Board posed the following queries: "Has an analysis been done of the number of single family residences in each residential zoning district and the size of those lots to determine how many are noncompliant with the requirement? How does the recently enacted local law that eliminates the calculation of cellars in the FAR of a single family dwelling impact this provision? Will a proposed RPW be able to take

prevent emergency service providers from getting to the RPW." If the Village insisted upon off-site parking for RPW, the Planning Board found that the proposed distance to obtain parking up to 1500 feet from the RPW "(over a quarter of a mile) seems too far and should be limited to 500 feet walking distance." *Id.*

d. The concern that, with regard to RPWs, "allowing functions to continue until 12:00 AM or to start at 6:00 AM will disturb the immediate neighbors." The Planning Board further expressed concern that no restrictions whatsoever were put in place upon activities that were not "regularly scheduled," such as "[w]eddings, b'nai mitzvahs, bris' and other religious assembl[ies]." *Id.*

e. Opposition to the usage of building signage and outdoor lighting in excess of that permitted for a single-family residence. *Id.*

f. The admonition that it should be clear that, should an RPW cease to be used as a single-family dwelling, the conditional use for the property as an RPW would also cease. *Id.*

69. With regard to NPWs, the Village Planning Board recommended that this category of use be ***entirely omitted*** for consideration in the House of Worship Law, stating that "[t]he NPW is too intense of a use to be permitted on standard size residential lots." *Id. at 4.*

70. If the Village insisted upon the creation and endorsement of NPWs, the Village Planning Board recommended that:

a. The lot size be set at a minimum of two (2) acres. *Id. at 4.*

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advantage of the exclusion of cellars to be able to build yet a larger structure that may be out of character with the neighborhood?" *Village PB Memo 2.*

b. Given the fact that accessory uses such as social halls "will disrupt the single family nature and character of a residential neighborhood on such small lots," same should have a minimum lot size of three (3) acres. *Id.*

c. All parking should be provided on-site, given "the potential to significantly disrupt a neighborhood." *Id.*

d. Permitted hours of operation should be further limited, as set forth in ¶68(d), *supra.* [10] *Id.*

71. In addition to its many environmental concerns including, but not limited, to those identified and set forth *supra*, the Village Planning Board expressed the following general concern regarding the House of Worship Law:

> "We question why only the input of one religious organization (the Orthodox Jewish Coalition) was considered in connection with the drafting of the proposed local law. The proposed law is designed to favor one religious institution over another. We are concerned that it may be unconstitutional and prohibited pursuant to the Establishment Clause of the First Amendment."

Town of Orangetown Resolution No. 397

72. Pursuant to the requirements of General Municipal Law 239-nn, the proposed House of Worship Law was forwarded to the Village's neighboring municipalities for comment.

73. By resolution dated June 26, 2018, the Town of Orangetown unanimously adopted Resolution No. 397 ("Orangetown Resolution") which stated, in part, as follows:

> "WHEREAS, the Planning Board of the Village of Chestnut Ridge, in a memorandum dated May 29, 2018 has formally stated that "the provisions of the Local Law have the potential to significantly disrupt the peaceful and quiet harmony associated with single family zoning districts and alter single family neighborhoods and impact the quality of life of the residents of the Village, the

[10] With regard to Community Places of Worship (CPW), the Village Planning Board also suggested that the Village consider limitations upon the hours of operation for events not "in the nature of religious worship."

(cont.)

> associated parking issues, noise, and traffic can severely impact the neighboring single family dwellings," and
>
> WHEREAS, as a neighboring town, the Town of Orangetown shares the concerns expressed by the Planning Board of the Village of Chestnut Ridge,
>
> NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Orangetown hereby recommends that the Village of Chestnut Ridge review and modify the proposed law to address the concerns raised by the Planning Board of the Village of Chestnut Ridge in its memorandum dated May 29, 2018, and further reiterated herein by the Town Board, particularly with respect to decreasing lot size requirements, parking, and issues related to occupancy limits, as more fully set forth in the Chestnut Ridge Planning Board's memorandum . . ."

A copy of the Orangetown Resolution is annexed hereto as Exhibit "11."

Public Hearing of June 28, 2018

74. The first public hearing upon the House of Worship Law occurred on June 28, 2018. In addition to several Village residents, speakers included the Jonathan Lockman, a planner for the Village, the Village's attorney,[11] Respondent Presti, Petitioner Kogut, Planner Alan Sorensen, the undersigned, and attorneys Michael DeLeeuw, Esq. and Robert Green, Esq.[12] A copy of the Transcript for the June 28, 2018 Public Hearing ("6/28/18 Public Hearing") is annexed hereto as Exhibit "12."

75. Mr. Sorensen, while specifically and emphatically agreeing that places of worship must be accommodated within the Village,[13] highlighted the potential adverse environmental impacts he identified in the 4/25/18 Planit Report, and emphasized the need for the Village to consider such monumental potential changes to land use patterns within the context of a

[11] Mr. Lockman and the Village Attorney, Walter Sevastian, Esq., described the proposed law and the legal process for the consideration of the local law, respectively.
[12] Messrs. DeLeeuw and Green discussed the Religious Land Use and Institutionalized Persons Act ("RLUIPA") and its potential applicability to the House of Worship Law, a discussion of which is beyond the scope of the instant proceeding.
[13] See *Transcript of 6/28/18 Public Hearing 28* ("Clearly there's a need for accommodation somewhere in the Village for places of worship. I don't question that whatsoever.").

comprehensive plan.[14] At a minimum, such issues "really need a thorough assessment through the environmental review process." See *6/28/18 Public Hearing 27-28.*

76. The undersigned affirmed that CUPON of Chestnut Ridge, an unincorporated association on behalf of whom the undersigned appeared, is composed of:

> " . . .your neighbors . . .[and] your constituents and they're people that love this Village. They are people, like all good Americans should, are people who believe in equal treatment for everyone regardless of race, creed, color or religion.
> . . .
>
> [They] are people who hold sacred the idea of freedom of religion as all good Americans should.
> . . .
>
> Religious worship or the absence of religious worship should be honored and protected and it is protected in the Constitution and Federal and State Law and people of good [conscience] also protect it. However, the rights of those who wish to worship in a particular way do not trump the needs of everyone else.
> . . .
>
> CUPON is concerned that this basic American view is not being adequately advocated by its representatives."

Id. at 29 - 30.

77. The undersigned also stated as follows:

> "The law that was presented at the Village Board meeting on February 22, 2018 was added to the agenda with less than two days notice . . .[e]ven though it was the product of negotiations for an unknown period of time between Board Members, the Orthodox Jewish Coalition and Brooker Engineering, which was hired by the Orthodox Jewish Coalition, and no one else. No one else. FOIL requests made to the Village show that there are no records of the meetings, we don't know who attended on behalf of the Board, we don't know if it complies with the open meetings law, but what we do know is that almost two weeks before the February 22nd meeting a memorandum was prepared and presented to the Village Board that set forth this proposed law, why then only two days notice [before this was] dropped onto the agenda?"[15]

[14] *Id. at 23-29.*

[15] A copy of an e-mail chain confirming submission of a written FOIL request for "correspondence, e-mails or any meeting minutes related to the collaborated effort by the Village Board, 2 planning firms, 1 hired by the Village and 1 retained by a private group" resulting in the 2/9/17 Memorandum and the e-mailed response from Florence Mandel, Village of Chestnut Ridge Clerk, stating that "[t]he records that you requested in your FOIL request of 2/27/18 do not exist," is annexed hereto as Exhibit "13."

Id. at 30-31.

78. The undersigned continued, highlighting the potential effect the passage of the House of Worship Law would have on resources like fire, water, sewer, and police, the effect upon the character of the community by the radical changes in use authorized by the proposed law, the increase in noise, traffic, light pollution, parking, safety issues, the difficulties in enforcement, and the granting of "automatic [zoning] variances" to RPWs, among other concerns. *Id at 32-35.*

79. Members of the public spoke, some in support and some in opposition of the House of Worship Law,[16] with opponents thereof echoing concerns regarding enforcement, the absence of limitation upon the number of RPWs within a given area, parking, and criticism regarding the manner in which the House of Worship was negotiated and presented, while also citing other concerns, including issues of property taxes, suggestions that a moratorium be implemented to allow for further study prior to the passage of the House of Worship Law, and safety concerns.

Continuation of Public Hearing - July 24, 2018

80. The above-referenced, and similar concerns, continued to be raised by members of the community at the continuation of the public hearings on July 24, 2018.

81. One notable speaker on July 24, 2018 was Beatrice Burgess of Burgess Associates, a planning firm located in Westwood, New Jersey. Ms. Burgess stated:

> "Our firm represents close to forty municipalities in New Jersey. We've also worked with other municipalities in New York such as Sloatsburg, Tuxedo, a number in Westchester. The reason why I'm here tonight is because we're the borough planners for Saddle River, Upper Saddle River, Ramsey, Allendale, Ho-Ho-Kus, and we are always monitoring what happens north of us because we're interested [in the] impact of development and how it effects our community. Things do not happen in a vacuum. I had the opportunity to review this ordinance and I have to say I found part of it problematic. I was heartened to see the comments by your Planning board as I agree with many of them and it saves me

[16] Both opponents and proponents of the House of Worship Law spoke with emotion and, in addition to raising relevant issues, raised extraneous and immaterial issues. Some of the members of the public spoke with anger.

(cont.)

> the time of going through some of the issues I had had. But the most important part that I wanted to bring up is that it would seem that the objective in the ordinance predetermine[s] the conclusion and it really reinforces the notion that a master plan, a comprehensive master plan, is needed. My firm has done dozens of these and you say it takes three years or four years. We've done communities much larger than yours in less than half that time and we have worked with all the residents."

See *Transcript of Public Hearing on July 24, 2018* ("7/24/18 Transcript") *197 – 198.*[17] A copy of the 7/24/18 Transcript is annexed hereto as Exhibit "14."

Second Rockland County Department of Planning GML Review

82. On or about September 18, 2018, pursuant to General Municipal Law 239-L and 239-M, the second draft of the House of Worship Law was referred to the Rockland County Department of Planning ("RC Planning"), with an acknowledged "received" date thereupon of September 18, 2018.

83. RC Planning issued its response dated October 18, 2018 ("10/18/18 RC Planning GML Review"). A copy of the 10/18/18 RC Planning GML Review is annexed hereto as Exhibit "15."

Additional Memoranda by Nelson, Pope & Voorhis, LLC

84. The Village Planners submitted memoranda to the Respondent Presti and the Board of Trustees dated August 29, 2018 ("8/29/18 Nelson Memorandum") and October 26, 2018 ("10/26/18 Nelson Memorandum"). Copies of the 8/29/18 and 10/26/18 Nelson Memoranda, with their respective attachments, are annexed hereto as Exhibits "16" and "17," respectively.

[17] In responding to the comments of Ms. Burgess, Respondent Presti promptly stated that "Ms. Burgess actually applied for the planner's position here at the Village not long ago . . ." By way of commentary, the undersigned believes the implication by Respondent Presti was that Ms. Burgess's comments could be entirely discounted as they were not the product of either her concern as the planner for neighboring communities, nor her professional judgment, but merely "sour grapes" at being rejected for the Village's planner position.

85. The 8/29/18 Nelson Memorandum, purportedly prepared in response to a workshop held by the Village Board of Trustees on August 8, 2018, set forth changes to the House of Worship Law as proposed in the 2/9/17 Nelson Memorandum.

86. The 8/29/18 Nelson Memorandum made, *inter alia,* the following changes:

a. RPWs would now be called "residential gathering places," ("RGP), to indicate that "[a]ll regular large gatherings in private homes will require a conditional use permit – not just religious assemblies."

b. Require RGPs and NPWs to provide 50% and 75% of required parking spaces on-site, respectively, with the remainder to be provided "offsite (including on private driveways), up to 1500 feet away" as originally proposed, *8/29/18 Nelson Memorandum 1.*

c. Explicitly permit on-street parking for RGPs and NPWs, subject to certain limitations and restrictions. See *8/29/18 Nelson Memorandum 2.*

d. Explicitly permit places of worship on pre-existing, non-conforming, undersized lots, as long as said lots were conforming at the time of construction and are at least 80% of the minimum lot size. *Id.*

e. Explicitly permit RGPs and NPWs an additional 10% lot development coverage "over residential single-family homes in the district to facilitate the provision of on-site parking."

87. The 10/26/18 Nelson Memorandum, accompanied by parts 1 and 2 of the Full Environmental Assessment Forms ("10/26/18 FEAF"), agreed with the submissions and verbal comments of Alan Sorensen, AICP of Planit Main Street, Inc., the Village Planning Board, the undersigned, and members of the public including, but not limited to, the comments of Beatrice

Burgess, AICP, on July 24, 2018 and identified three (3) areas of potential moderate to large adverse environmental impacts; to wit (a) Transportation; (b) Consistency with Community Plans; and (c) Consistency with Community Character. See *10/26/18 Nelson Memorandum 1-2.*

88. The Village's Planners acknowledged "increases in vehicle traffic and pedestrian movements" and on-street parking, with a corresponding increased risk of safety hazards, given that participants in such gatherings may "walk on streets with limited or no sidewalks, and on-street parking may decrease the width of the travelled-way, potentially creating traffic conflict." Such pedestrian and vehicle traffic during the evening or early morning hours, or other times of reduced visibility, would be particularly at risk. *Id. at 1.*

89. The Village's Planners further acknowledged that "[t]he proposed action is not consistent with adopted land use plans" and being "inconsistent with the existing community character" with the new, proposed uses being non-residential, requiring more parking spaces and on-site walkways, access ramps, paving, lighting, being "somewhat" larger in size and bulk and resulting in increased noise than single family homes. *Id. at 2.*

Continuation of Public Hearing - November 20, 2018

90. The undersigned spoke again at the November 20, 2018 Public Hearing, again emphasizing that CUPON of Chestnut Ridge emphatically supports the right to freedom of worship, as does the U.S. Constitution, Federal and State Law,[18] and arguing that the House of Worship Law does not comply with the Village's "comprehensive plan," as same is defined by statute and case law, in violation of New York State law. The undersigned further provided an amended report Planit Main Street, Inc. report dated November 20, 2018 ("11/20/18 Planit

[18] The undersigned also refuted that the passage of the House of Worship Law, in its current form, is mandated by RLUIPA. Again, a discussion of the applicability of RLUIPA is beyond the scope of the instant action.

Report"). A copy of the 11/20/18 Planit Report and transcript of the November 20, 2018 Public Hearing ("11/20/18 Transcript") are annexed hereto as Exhibit "18" and "19," respectively.

91. The undersigned further encouraged the Village to reject the "tainted" process by which the House of Worship Law was crafted, and rather "open[ ] the door to expert planning . . . not with a predetermined outcome, but with an open mind." The undersigned further shared the results of an "informal survey of nineteen villages and five towns in the County of Rockland." Of these villages and towns:

> "There are three villages that have existing house of worship laws. Two were passed in accordance with a passage of a comprehensive plan after years of planning. This is a rush to judgment, this has a predetermined outcome and as a result it should be rejected."

92. Several additional residents of the Village spoke, again raising issues of, *inter alia,* enforcement (both of the current zoning laws and the proposed House of Worship Law), the potential issues engendered by off-site parking, desire for a comprehensive plan and/or building moratorium, complaints regarding the manner in which the House of Worship was negotiated and presented, property tax exemptions, First Amendment concerns, and concerns regarding the integrity of the Village's elected representatives.[19]

93. Also speaking during public comment was Christopher Carey, a Rockland County legislator representing, among other areas, a portion of Ramapo. Legislator Carey called into question the assertion by Respondent Presti during the July 24, 2018 Public Hearing that a comprehensive plan would take three or four years.[20] Legislator Carey stated that he took part in an "award winning comprehensive plan recogniz[ed] by the Pace Land Use Institute" for the

[19] Also speaking was Richard Berney, Esq., representing CUPON of Chestnut Ridge, who again emphasized that RLUIPA does not mandate the passage of the House of Worship Law, and encouraged the preparation of a comprehensive plan.

[20] See *7/24/18 Transcript 142* (MAYOR PRESTI: . . . "Now with regard to the comprehensive plan, I will again try to advise what I thought I've been trying to articulate in the past. To do an entire comprehensive plan of this Village would probably take close to do (sic) three or four years.")

Town of Crawford, which took "eighteen months from start to finish." See *11/20/18 Transcript*

48. Legislator Carey added:

> "I would submit that the comprehensive plan that you would need to put together is nowhere near as complex as one Clarkstown would have had to have done and I think you can do in much shorter timeframe than 18 months. That's why I don't think that four year timeframe is realistic and I really ask you guys to go back and sharpen your pencils on that. It's just not reality."

Id.

94. Legislator Carey concluded:

> "I implore you to go back to the drawing board, start over with that tried [and] true . . . process. You are members of the Rockland County Municipal Planning Federation which I was a trustee for five years. The process is well documented . . . It's not anything new . . . I implore you to go back, to do the right job and come back and make sure that whatever you document has taken in all of the different input from various parts of [the] community, open space, recreation, that's why it's called a comprehensive plan. And again, I can't stress enough, the decisions you make don't end at the boundary line of the Village . . . [or] town. You impact everybody in Rockland County and I hope when you make that decision you remember that."

Id. at 49-50.

Continuation of Public Hearing – January 15, 2019

95. The undersigned spoke at the January 15, 2019, and again reminded the Village Board, *inter alia*, that:

a. CUPON of Chestnut Ridge believes in the founding principles of this nation, of which the freedom to worship as one pleases is rightfully and properly one of the most revered and protected rights we enjoy.

b. Substantial evidence of several potential significant adverse environmental impacts of the proposed House of Worship Law was before the Village Board, raised not only by Alan Sorensen, AICP, but also by the Village's own

Planning Board, and even by the Village's Planner, albeit in substantially "watered-down form" in the 10/26/18 Nelson Memorandum.

c. The undersigned cited New York State statutory and case law, evidencing that the proposed House of Worship Law was not in compliance therewith, in that it is a drastic departure from the Village's existing comprehensive plan.[21]

d. As noted by the Village Planning Board and many others, the process by which the House of Worship law was fashioned was tainted from the outset, as it was crafted at non-public meetings wherein only the OJC and the OJC's engineering firm was invited to attend, and no minutes, notes, or even attendance records were apparently taken.[22]

96. In fact, the undersigned produced evidence at the January 15, 2019 Public Hearing, obtained in response to a FOIL request, that the Village's Planners first billed for review of the draft House of Worship Law on ***August 15, 2017***, more than six (6) months before the Village revealed to the public, on February 22, 2018, that it was even considering such changes.

97. The invoices evidence that a three (3) hour meeting was had on September 6, 2017 between the Village's Planners and the engineering firm hired by OJC and, all told, that the Village's Planner billed eleven (11) hours in August and September to the Village on the OJC's proposed House of Worship Law, prior to any public disclosure being made that changes to the zoning law were anticipated. Copies of the aforesaid invoices received in response to the FOIL demand are annexed hereto as Exhibit "21."

[21] The undersigned also stated, once again, that RLUIPA does not mandate the passage of the House of Worship Law, and submitted a "white paper" thereupon, a copy of which is annexed hereto as Exhibit "20." Again, the applicability/inapplicability of RLUIPA to the instant controversy is beyond the scope of this action.
[22] See Exhibit "13."

98. The undersigned submitted a report dated January 14, 2019 prepared by Alan J. Sorensen, AICP, Planning Consultant with Planit Main Street, Inc. ("1/14/19 Planit Report"). The 1/14/19 Planit Report, a copy of which is annexed hereto as Exhibit "22," reviewed Part 1 and 2 of the 10/26/18 FEAF.

99. In parsing the 10/26/18 FEAF prepared by the Village Planners, the 1/14/19 Planit Report identified and highlighted numerous inaccuracies and errors therein.

100. The 10/26/18 FEAF incorrectly reported that there were no "municipally-adopted (city, town, village or county) comprehensive land use plan(s) [which] include the site where the proposed action would be located." The 1/14/19 Planit Report notes that Rockland County has an adopted Comprehensive Plan, and the Village[23] is located within the Hudson Valley River Greenway. See *1/14/19 Planit Report 2 (Part C. Planning and Zoning C.2. Adopted land use plans).*

101. The 10/26/18 FEAF incorrectly reported that the anticipated use is "permitted or allowed by a special or conditional use permit."

102. Although "houses of worship" were permitted throughout (almost) all of the residential zones of the Village, same bear no resemblance to RGPs, which ***may*** be used as houses of worship under the House of Worship Law, but are emphatically ***not limited*** to usage for religious worship.

103. There were no such analogous uses within the Code prior to the passage of the House of Worship Law and, as such, no analogous provision for issuance of a special permit

[23] Both the Town of Ramapo and the Village are located within the Hudson Valley River Greenway. The reference in the 1/14/19 Planit Report only to the Town and not the Village is a typographical error.

existed for an RGP under the law as it existed prior to the passage of the House of Worship Law.[24]

104. NPWs must also, by the same rationale, be deemed prohibited under the current zoning code, as they too are not expressly permitted in the Village. NPWs bear no resemblance to the former zoning law regarding places of worship, as they (a) may include a residential component; and (b) have no minimum lot size, as opposed to the 5-acre minimum under the prior law, among other distinctions.[25]

105. The 10/26/18 FEAF incorrectly reported that the House of Worship Law will not "involve construction that continues for more than one year or in multiple phases." As stated by Mr. Sorensen:

> "[The House of Worship Law] is likely to trigger new construction throughout the community for years to come. The cumulative impacts of such development would likely have significant adverse environmental impacts – especially with respect to construction noise, lighting, stormwater runoff and community character."

Id. at Part 1. Impact on Land: §1. e.

106. For similar reasons, the 10/26/18 FEAF incorrectly reported that the House of Worship Law will not result in increased erosion due to "physical disturbance or vegetation removal," and would not lead to "siltation or other degradation of receiving water bodies" due to storm water discharge. On the contrary, as stated by Mr. Sorensen:

> "Again, the [House of Worship Law] is likely to trigger new construction throughout the community for years to come. The cumulative impacts of constructing new on-site parking areas and expanding or constructing new buildings throughout the Village's residential neighborhoods will increase the potential for erosion and result in greater impervious surface, thereby creating a

[24] This would later be explicitly admitted in the FEAF Part 3, which stated: "Residential Gathering Places currently are not expressly permitted in the Village, and are therefore deemed prohibited under the current zoning code." *1/9/19 FEAF: Part 3 at 2.*

[25] The Village Planners themselves admit that RGPs and NPWs are "new uses." *1/9/19 FEAF: Part 3 at 10.*

> new source of stormwater discharge. The real danger is the individual impacts of such developments will likely fall under the 1-acre threshold for triggering a Stormwater Pollution Prevention Plan (SWPPP) – while the cumulative impacts over time would affect tens, if not hundreds, of acres of new land disturbance with no post development stormwater management."

Id. at Part 3. Impacts on Surface Water §3. h.

107. While the 10/26/18 FEAF correctly reported that the House of Worship Law may result in a moderate to large impact, as same "may alter the present pattern of movement of people or goods" and the "increase in pedestrian movements and on-street parking at gathering places and places of worship may create hazards for pedestrians and motorists," the FEAF incorrectly indicated that same would not "result in the construction of paved parking area for 500 or more vehicles." Clearly, as Mr. Sorensen states, "[t]he cumulative impacts of the Local law could easily exceed this number." *Id. at 3, Part 13. Impacts on Transportation.*[26]

108. The 10/26/18 FEAF incorrectly reported that the House of Worship Law would not likely "result in an increase in noise, odors, or outdoor lighting." It is irrefutable that the land use engendered by the House of Worship Law may, as stated by Mr. Sorensen:

> " . . . produce sound above noise levels established by local regulation (i.e., construction-related noise and long-term noise associated with large gatherings) . . . [The House of Worship Law] may also result in lighting creating sky-glow brighter than existing area condition since public assembly and paved parking areas associated therewith for guest[s] would require more site lighting than single-family homes. The cumulative impacts related to noise and light are potentially significant adverse environmental impacts that need to be assessed and mitigated."

109. Mr. Sorensen agreed with the Village's Planners that the House of Worship Law "is not consistent with adopted land use plans," and is "inconsistent with the existing community character," emphasizing that the existing land use pattern in the Village consists of

[26] The 1/14/19 Planit Report further incorporates the likelihood of substantial adverse environmental impacts vis-à-vis traffic, parking, noise, demand for community services such as fire, water, sewer, police, and ambulance, and the need for of expansion of the sidewalk system identified in the 4/25/18 Planit Report.

"predominantly single-family neighborhoods surrounding non-residential nodes within the Village." *Id. at 4, Part 17. Consistency with Community Plans; Part 18. Consistency with Community Character.* As repeated so many times before in this process, Mr. Sorensen urged preparation of a formal comprehensive plan.

110. Given the potentially significant adverse impacts detailed above, attested to in part by the Village's own planners, the 1/14/19 Planit Report concludes that "[a] Generic Environmental Impact Statement (GEIS) must be prepared in accordance with 6 NYCRR Part 617 State Environmental Quality Review §617.10 to further assess the impact(s) and possible mitigation measures and to explore alternatives to avoid or reduce those impacts." *Id at 4.*

Issuance of the Negative Declaration – January 15, 2019

111. From the period beginning when the House of Worship Law was first revealed to the public on February 22, 2018 through the last evening of the Public Hearing thereupon on January 15, 2019, the Village Board had before it a laundry list of environmental concerns, as set forth in detail above, from its own Planning Board, from Alan Sorensen, AICP of Planit Main Street, Inc., from neighboring communities such as the Town of Orangetown and Clarkstown, from members of the public, and even from the Village's own planners raising issues regarding parking, pedestrian and vehicular traffic and hazards, noise, lighting, erosion, stormwater, expansion of sidewalks, police, fire, ambulance, sewer, water, inconsistency with community character and with community planning.

112. Notwithstanding all of the above, and notwithstanding the submission on January 15, 2019 of the 1/14/19 Planit Report which highlighted a number of rather obvious errors and omissions in the 10/26/18 FEAF (e.g., that the House of Worship Law, by permitting single-family residences to be used for regular gatherings of up to 49 people will result in increased noise), the January 15, 2019 Public Hearing concluded with the Village Board electing to issue a

negative declaration under SEQRA ("Neg Dec"), purportedly in reliance upon a new FEAF submitted by the Village Planners dated January 9, 2019 ("1/9/19 FEAF"). A copy of the 1/9/19 FEAF and the Environmental Notice Bulletin (ENB) Negative Declaration are annexed hereto as Exhibits "23" and "24."

113. The 1/9/19 FEAF, which was ***not posted*** upon the Village's website in advance of the January 15, 2019 Public Hearing (despite being dated January 9, 2019) and, therefore, was not addressed in the 1/14/19 Planit Report, includes Parts 1, 2 and 3 thereof. Parts 1 and 2 are virtually identical to Parts 1 and 2 of the 10/26/18 FEAF, with the exception of the addition of a three (3) page addendum to Part 1, which acts as an introduction of sorts to Part 3. Part 3 supplies the Village's reasons in support of their determination of significance under SEQRA.

114. As the Village Planners already determined in the 10/26/18 FEAF that the House of Worship Law will not be likely to have ***any*** environmental impact upon erosion, stormwater discharge, noise, and light,[27] the Village Planners only narrowly considered in the 1/9/19 FEAF what they themselves had already identified as likely to result in a "moderate to large" impact; namely, Transportation (i.e., that "the proposed action may alter the present pattern of movement of people or goods" and "increase in pedestrian movements and on-street parking at gathering places and places of worship may create hazards for pedestrians and motorists"), Consistency with Community Plans (i.e., "the proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern[s]"), and Consistency with

[27] Notwithstanding the Village's Planners indication that there would be no environmental impact upon noise and light in the 10/26/18 and 1/9/19 FEAFs, same specifically acknowledge that places of worship would have such impacts ("Concerns have been raised that Places of Worship and Gathering Places may have more parking spaces and walkways on-site as compared to a single-family home. Access ramps or lighting with such uses may be larger or more intense than usually found in residential areas. The size and bulk of buildings housing places of worship or gathering places may be somewhat larger than homes in the surrounding neighborhood. Some noise impacts may occur as people leave or enter vehicles, and from conversations prior to participants entering the building. Concerns were also raised concerning noise emanating from activities within the building, including voices, music or dancing." *1/9/19 FEAF: Attachment at 10.*

Community Character (i.e., "nonresidential assembly and place of worship uses may be established within existing homogeneously developed residential neighborhoods.").

115. In Part 3 of the FEAF, the Village's Planners conclude that the House of Worship Law "will result in no significant adverse impact on the environment, and, therefore, an environmental impact statement need not be prepared." *1/9/19 FEAF at 2.*

Resolution 2019-12 and Passage of House of Worship Law

116. On February 21, 2019, the Village Board voted upon and approved Resolution 2019-12 ("Resolution"), approving the House of Worship Law. A copy of the Resolution, certified by the Village Clerk, is annexed hereto as Exhibit "25."

117. The Resolution alleges that the House of Worship Law, as an amendment to the existing Zoning Code for the Village of Chestnut Ridge ("Code") was (officially at least) precipitated by the filing, on or about November 1, 2017, of a "written petition . . . in letter form" from Brooker Engineering, PLLC "on behalf of the Orthodox Jewish Coalition of Chestnut Ridge" ("11/1/17 Brooker Letter"). *Resolution 1.*

118. The Resolution continues, describing the purported timeline of events leading up to the June 28, 2018 Public Hearing.[28] *Id. at 1-4.*

119. Beginning with the description of the June 28, 2018 Public Hearing and continuing thereafter, the Resolution devolves into what can be described, at its most generous, as a highly subjective description only of residents who opposed the passage of the House of Worship Law[29] (although tempers flared at the public hearings on both sides of the issue), stating that same engaged in, for example:

[28] Significant segments of this timeline are wholly and demonstrably inaccurate, as shall be described in detail, *infra.*
[29] In one relatively minor, but telling, instance, letters in opposition to the House of Worship Law were described as "***form*** letters" (emphasis added), while letters from supporters of the House of Worship Law were simply described as "letters."

> ". . . catcalls, shouting down of individuals who spoke in favor of the proposal, outright animus, and even discriminatory bias demonstrated against the Orthodox Jewish residents of Chestnut Ridge and members of the Village Board."[30]

Id. at 4.

120. The Resolution continues with an evaluation of the 4/25/18 Planit Report, finding same "deficient in several significant respects, . . . [which] deficiencies undermined the report's value and weight during the Board's deliberation on the proposed local law," and concluding that the 4/25/18 Planit Report "clearly concludes that residential neighborhoods are not suitable locations for places of worship . . . [belying] ignorance of the basic long standing legal principal (sic) that houses of worship are inherently beneficial to residential neighborhoods." *Id. at 5-6, ¶2.*[31]

121. The 4/25/18 Planit Report, and the undersigned,[32] are particularly pilloried for our purported failure to conduct an "analysis of what the potential environmental impacts of establishing houses of worship under the current law are as compared to what would occur under the proposed local law" (emphasis in original), to evaluate proposed mitigation, and to consider that each individual project would undergo site-specific SEQRA analysis. *Id. at 6, ¶3; Id. at 7.*

122. The Resolution proceeds with a discussion and description of the 1/9/19 FEAF,[33] including its methodology and analysis of environmental impact, mitigation, and acknowledgement of the House of Worship Law's purported compliance with State and Federal

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[30] The Resolution then takes the highly unusual step in a municipal resolution of citing individual members of the community by name and quoting their public comments verbatim as purported evidence of such "outright animus and . . . discriminatory bias" and returning over and over to this issue. Petitioners have never engaged in any such behavior and disaffirm such language and/or behavior. Nevertheless, even if said comments and/or behavior was offensive, same is utterly immaterial to the issue of whether the House of Worship Law was passed in compliance with SEQRA, which it most emphatically was not.

[31] There is, very simply, no conclusion or even suggestion in the 4/25/18 Planit Report that residential neighborhoods are inappropriate for the siting of houses of worship. The Village clearly mistakes identification of significant environmental concerns deserving of analysis as the aforesaid conclusion.

[32] Additional comments made regarding the undersigned will be addressed in greater detail, *infra.*

[33] The FEAF is incorrectly referred to throughout the Resolution as a "LEAF," a term that has not been in use for many years.

law, reference to the preparation of revised drafts of the House of Worship Law,[34] as well as further slanted commentary upon opponents to the House of Worship Law who chose to express themselves at the continued public hearings.

123. The 1/14/19 Planit Report is subject to the same critique as the 4/25/18 Planit Report and is declared deficient in the same manner including, but not limited to, the 1/14/19 Planit Report's "lack of any detailed empirical analysis of the true impact of development permitted under the existing code versus that possible under the proposed local law . . ." *Id. at 12.*

124. The Resolution describes the adoption of the Neg Dec, in part, as:

> ". . . determining that there were no significant adverse environmental impacts associated with implementing the proposed local law as compared to impacts that may result from applications made under the existing zoning code, and/or no substantial environmental impacts exist that could not be mitigated through the site specific SEQRA reviews to be undertaken when applications for approval are made under the proposed local law . . ."

Resolution at 13.

125. The Resolution continues with a description of the remaining chronology of the House of Worship Law (the close of the public hearing, etc.), and concludes with selectively quoting a named member of the public who chose to express his opposition to the proposed House of Worship Law, and stating that same "sum(s) up the opposition to the proposed local law," in that it evidences:

[34] It is worthy to note that the undersigned is quoted as referring to the version of the House of Worship Law presented at the January 15, 2019 Public Hearing as "a substantially watered down version" of the original draft of the law, which the Village takes as a tacit admission that the House of Worship Law was substantially modified to incorporate relevant comments from the public, referral agencies, etc. This is a clearly selective misreading of the undersigned's comment. The undersigned stated that "We've set forth substantial evidence of the potential significant adverse environmental impacts of the proposed law, impacts which have also been raised with concern by the Village's own Planning Board and now, despite it being in a substantially watered down version, from the Village's planner in their October 26, 2018 memorandum." What is described as being "watered down" is the description of the significant adverse environmental impacts of the House of Worship Law as identified by the Village's own planner in their October 26, 2018 Memo.

> "a basic failure to recognize the requirement that a municipality must strive to accommodate legitimate assembly and religious practice of all denomination (sic) within its borders. Taken to their logical conclusion, the final comment submitted on the proposed local law, and the bulk of the comments opposing the proposed local law made at the Public Hearings by those opposing the proposed local law, would have the Village Board either ban places of religious assembly from residential neighborhoods altogether, or impose arbitrary numerical limitations on a person's right to worship. The Village Board finds that position to be contrary to law."

Id. at 14-15.[35]

126. The House of Worship Law was stamped filed with the New York State Department of State, State Records Department, on March 5, 2019 thereby becoming, in accordance with its terms, effective as of that date. A copy of the filed House of Worship Law is annexed hereto as Exhibit "26."

AS AND FOR A FIRST CAUSE OF ACTION AND CLAIM FOR REVIEW

The House of Worship Law is null and void as the Village failed to identify several relevant areas of environmental concern under SEQRA as required thereunder

127. It is incumbent upon Respondents, as lead agency, to "identify the relevant areas of environmental concern" to "take a hard look" at said areas and make a "reasoned elaboration" of the basis for its determination in order to satisfy the requirements of SEQRA. See Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d at 416-417.

128. It is impossible, however to take a "hard look" or to make a "reasoned elaboration" of the basis of a determination upon a relevant area of environmental concern if there is a total failure to identify said relevant area at all.

129. Nowhere in the SEQRA documentation, including but not limited to the 10/26/18 and 1/9/19 FEAFs and/or Resolution, did Respondents identify and consider, as required, the fact

[35] The "summation" of the opposition to the House of Worship Law has no basis in truth. It is a purely subjective evaluation that selectively admits or ignores the evidence before it so as to reach a predetermined outcome, i.e., to pass the House of Worship Law, largely as originally presented.

that the House of Worship law will "involve construction that continues for more than one year or in multiple phases," despite the fact that this item was specifically brought to Respondents' attention, in writing, in the 1/14/19 Planit Report. See ¶ 105, *supra.*

130. As is stated in the 1/14/19 Planit Report, the House of Worship Law "is likely to trigger new construction throughout the community for years to come." *1/14/19 Planit Report, FEAF Part 2: Impact on Land: §1. e.*

131. Even assuming, *arguendo*, the opinion of a professional planner with decades of planning expertise and experience such as Mr. Sorensen is entirely discounted, common sense dictates that the House of Worship Law will likely trigger such construction over the course of many years.

132. In the FEAF Part 3, the Village's own planners acknowledge "the transitioning demographics of the Village which has experienced an influx of strictly-observant Jewish families." *FEAF PART 3 at 3.* It is counter-intuitive that such an "influx" of families will not utilize the House of Worship Law to construct places of worship that may be more convenient.

133. Nowhere in the SEQRA documentation, including but not limited to the 10/26/18 and 1/9/19 FEAFs and/or Resolution, did Respondents identify and consider, as required, that the House of Worship Law will likely result in increased erosion due to "physical disturbance or vegetation removal," and would likely lead to "siltation or other degradation of receiving water bodies" due to storm water discharge.

134. As set forth *supra*:

> "Again, the [House of Worship Law] is likely to trigger new construction throughout the community for years to come. The cumulative impacts of constructing new on-site parking areas and expanding or constructing new buildings throughout the Village's residential neighborhoods will increase the potential for erosion and result in greater impervious surface, thereby creating a new source of stormwater discharge. The real danger is the individual impacts of

(cont.)

> such developments will likely fall under the 1-acre threshold for triggering a Stormwater Pollution Prevention Plan (SWPPP) – while the cumulative impacts over time would affect tens, if not hundreds, of acres of new land disturbance with no post development stormwater management."

1/14/19 Planit Report at Part 3. Impacts on Surface Water §3. h.

135. Nowhere in the SEQRA documentation, including but not limited to the 10/26/18 and 1/9/19 FEAFs and/or Resolution, did Respondents identify and consider, as required, that the House of Worship Law would likely "result in the construction of paved parking area for 500 or more vehicles."

136. As set forth in the Affidavit of Alan Sorensen dated March 21, 2019 ("Sorensen Affidavit") annexed hereto:

> "7. The Institute of Transportation Engineers (ITE) 3rd Edition Parking Generation 2004 by Ransford S. McCourt, P.E., PTOE found the Average Peak Period Parking Demand vs: Attendees for a Church on a Sunday was 0.44 vehicles per attendee [See Exhibit A].
>
> 8. Based upon this industry accepted standard, a 49 person RGP, would generate a demand for 22 parking spaces. If we apply the standing parking space dimension of 9' x 18' with an aisle width of 24 feet, the land area to accommodate a 22-space parking area would be 5,940 square feet (sf). The creation of off-street parking for eight (8) RGP would exceed 1-acre of land disturbance (i.e., 43,560 sf = 1 acre). It would only take 22 RGPs to generate a cumulative demand for off-street parking of 500 parking spaces.
>
> 9. If we apply the ITE standard to 10,000 sf Neighborhood Place of Worship, with a 300-person congregation, it would generate an off-street parking demand of 132 parking spaces. Applying the land area per parking space described above (i.e., 22 spaces covering 5,940 sf], the 132-space parking area for a NPW would disturb and cover a land area of 35,640 sf, just shy of the 1-acre (43,560 sf) area that would trigger NYSDEC requirements for a Stormwater Pollution Prevention Plan (SWPPP). Furthermore, it would only take four (4) NPW to generate a parking demand of more than 500 parking spaces."

137. Therefore, the decision to issue the Neg Dec should be deemed arbitrary and capricious, and the House of Worship Law should be declared null and void for failure to comply

with SEQRA, as the Village failed to even identify the above likely significant adverse environmental impacts, let alone subject them to a "hard look."

AS AND FOR A SECOND CAUSE OF ACTION AND CLAIM FOR REVIEW

The House of Worship Law is null and void as the Village relied upon impermissible segmentation of the proposed action under review

138. Although somewhat speculative given the complete absence of discussion by Respondents anywhere in the SEQRA documentation of the issues of erosion and degradation of receiving water bodies, construction continuing for more than one year or in multiple phases, and the construction of paved parking area for 500 or more vehicles, it may be that Respondents regard these impacts as part of a future "site-specific SEQRA analysis" to be conducted for future projects under the law, which is an essential and oft-repeated legal underpinning to the Village's Neg Dec.

139. According to the Village's Planners, for example, the passage of the House of Worship Law itself does not "commit the Village to any specific course of action with respect to specific projects." Therefore, the "proposed amendments would themselves not pose any potential for significant adverse impacts." *1/9/19 FEAF at 3.*

140. The purported failure of Mr. Sorensen in evaluating future "site-specific SEQRA analysis" is relied upon heavily by the Village as support for deeming both the 4/25/18 Planit Report and the 1/14/19 Planit Report "deficient," which "deficiencies undermined the report's value and weight during the Board's deliberation on the proposed local law." See *Resolution 5 at §1; 6 at §3.*

141. A determination that "no substantial environmental impacts exist that could not be mitigated through the site specific SEQRA reviews to be undertaken when applications for approval are made under the proposed law" was the sole specific criteria cited in the Resolution

when discussing the adoption of the Neg Dec (along with the determination that "there were no significant adverse environmental impacts associated with implementing the proposed local law as compared to impacts that may result from applications made under the existing zoning code."). *Id. at 13.*

142. It is well-established, however, that reliance upon subsequent "site-specific SEQRA analysis" constitutes improper segmentation under SEQRA and is prohibited.

143. In Riverhead Business Improvement District Management Ass'n Inc. v. Stark, 253 A.D.2d 752 (1998), the Second Department specifically rejected the argument that a full SEQRA review upon site plan approval obviated the need to do such a review at the time of passage of a zoning amendment. "To comply with SEQRA," the Court held, "the Town Board was obligated to consider the environmental concerns that were reasonably likely to result from its zoning amendment at the time of its enactment," not at the time a specific project was put forth for approval. Riverhead Bus. Imp. Dist. Mgmt. Ass'n, Inc. v. Stark, 253 A.D.2d at 753–54.

144. Segmentation is defined in SEQRA as:

> "The division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance."

6 NYCRR 617.2(ah).

145. As set forth in 6 NYCRR §617.3(g):

> "(g) Actions commonly consist of a set of activities or steps. The entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it.
>
> (1) Considering only a part or segment of an action is contrary to the intent of SEQR."

146. In order to determine whether there is likely to be a significant adverse impact upon any of the statutorily enumerated areas of concern through a proposed action:

> ". . . the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are: (i) included in any long-range plan of which the action under consideration is a part; (ii) likely to be undertaken as a result thereof, or (iii) dependent thereon."

6 NYCRR 617.2(2).

147. To say that the construction of RGPs and NPWs is not "likely to be undertaken as a result" of the passage of the House of Worship Law or not "dependent" upon the passage of the House of Worship Law is to engage in a flight of pure fancy. Such construction is not merely "reasonably related" to the House of Worship. Rather, such construction is causally related thereto.

148. Among the stated purposes of the law is to allow for "smaller-scale places of worship customary to Orthodox congregations which are precluded from driving on holy days." *Resolution 3.*

149. Furthermore, as specifically required under 6 NYCRR 617.2(2), it is incumbent upon the Village to consider the likely ***cumulative*** effects on various areas of the environment by the House of Worship Law. Cumulative impacts were repeatedly raised in the 4/25/18 and 1/14/19 Planit Reports and were repeatedly ignored.

150. A very real example of the dangers of failing to consider cumulative effect is elucidated by Mr. Sorensen in his discussion of siltation and degradation of surface water (which was never mentioned in either of the Village Planners' FEAFs).

151. With construction of required new on-site parking areas, and the construction of larger structures upon single-family residential lots, impervious surfaces will increase and create additional stormwater discharge.

152. However, as Mr. Sorensen states, "[t]he real danger is the individual impacts of such developments will likely fall under the 1-acre threshold for triggering a Stormwater Pollution Prevention Plan (SWPPP) – while the cumulative impacts over time would affect tens, if not hundreds, of acres of new land disturbance with no post development stormwater management." *1/14/19 Planit Report at Part 3. Impacts on Surface Water §3. h.* In short, the environmental impacts of the added impervious surfaces will often ***never*** be the subject of a "site-specific SEQRA analysis."

153. Therefore, the decision to issue the Neg Dec is arbitrary and capricious, and the House of Worship Law should be declared null and void due to improper segmentation of the House of Worship Law from the impacts "likely to be undertaken as a result thereof, or . . . dependent thereon."

AS AND FOR A THIRD CAUSE OF ACTION AND CLAIM FOR REVIEW

The House of Worship Law is null and void as the Village failed to take a "hard look" at several relevant areas of environmental concern, which it identified, and failed to provide a "reasoned elaboration" of the basis for its determination

154. Although it hardly bears mentioning, it seems necessary to affirmatively state that the entire burden of identifying potential areas of environmental concern, subjecting same to a "hard look," and providing a "reasoned elaboration" of the basis for any determination rests exclusively upon the agency which seeks to engage in the proposed action. See, e.g., 6 NYCRR 617.1(c) ("SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.").

155. Members of the public, the undersigned, Mr. Sorensen, the Village Planning Board and the Village Planners themselves identified many potential areas of environmental concern, despite the fact that that responsibility belongs to the Village Board. The topsy-turvy response of the Village Board, however, was to cite the purported "failure" of these parties to provide "analysis of what the potential environmental impacts of establishing houses of worship under the current law are as compared to what would occur under the proposed local law" (emphasis in original) as grounds for finding that the passage of the House of Worship Law had no significant adverse environmental impacts. *Resolution at 6, ¶3; Id. at 7.* Said analysis is an EIS which, despite the repeated underlined and emphasized assertions made in the Resolution, is never incumbent under SEQRA for members of the public to complete.

156. As a general principle, it is important to note that it is "well settled that there is a relatively low threshold for the preparation of an EIS" should potential adverse environmental concerns be identified "and that, moreover, under the SEQRA regulations a Type I action, . . . 'carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS.'" Riverhead Bus. Imp. Dist. Mgmt. Ass'n, Inc. v. Stark, 253 A.D.2d 752, 753, (2nd Dep't 1998) (quoting 6 NYCRR 617.4 [a] [1]) (citations omitted).

157. As set forth *supra,* the Village properly identified three relevant areas of environmental concern in this Type 1 action, namely: (a) Transportation; (b) Consistency with Community Plans; and (c) Consistency with Community Character. See *10/26/18 Nelson Memorandum 1-2; 1/9/19 FEAF: Part 2.*

158. With regard to Transportation, the Village's Planners identified the likelihood that "the proposed action may alter the present pattern of movement of people or goods" and that the "increase in pedestrian movements and on-street parking at gathering places and places of

worship may create hazards for pedestrians and motorists." *10/26/18 Nelson Memorandum at 1*; *1/9/19 FEAF: Part 2 at 8.*

159. The Village's Planners explained:

> "When public gatherings and places of worship are established in residential neighborhoods, some increases in vehicle traffic and pedestrian movements may be expected on residential streets, and some additional on-street parking may occur. At the beginning and end of services or gatherings, participants may walk on streets with limited or no sidewalks, and on-street parking may decrease the width of the travelled-way, potentially created traffic conflicts. Uses may occur at nighttime or early morning hours, and these impacts could be more hazardous during times of low visibility."

10/26/18 Nelson Memorandum at 1.

160. The Village certainly did not take a "hard look" at any of the above issues identified by the Village's Planners in the 10/26/18 Nelson Memorandum. On the contrary, none of these issues were even mentioned in the 1/9/19 FEAF.

161. In the Resolution, reference was made to:

> "provisions designed to balance and minimize the impact of these types of uses on the surrounding neighborhoods through the use of bulk controls, occupancy controls, shielding of outdoor lighting, architectural review of building plans, screening in rear and side yards, front yard restrictions, limitations on hours of operation, limitations on accessory uses, control of signage and the imposition of landscape requirements."

Resolution at 10-11.

170. However, there was no indication in the Resolution as to what these purported mitigating measures sought specifically to mitigate, and to what degree they would be able to do so.

171. As the Court of Appeals in Merson v. McNally stated:

> ". . . mitigating measures will not obviate the need for an EIS unless they ***clearly negate*** the continued potentiality of the adverse effects of the proposed action. Otherwise, the EIS process would be necessary to review the adequacy of the

(cont.)

> mitigating measures, and any environmentally compatible alternatives to the suggested mitigations.

Merson v. McNally, 90 N.Y.2d 742, 754 (Ct of Appls 1997) (emphasis added).

172. Even if the undersigned were to do the work of the Village and match the mitigation referenced in the Resolution to the issues purported to be so mitigated, they do not meet the standard established in Merson. None of the purported mitigation identified *supra* could conceivably be deemed to mitigate the increases in vehicular and pedestrian movement.

173. The only "mitigation" conceivably applicable to the increased risk to pedestrians walking in streets with limited or no sidewalks during times of low visibility would be the purported "limitations of hours of operation," i.e., permitting operation seven days a week, 365 days a year, except during the hours of 12:00a.m. and 6:00a.m. (subject to the exception for "non-regularly scheduled" activities, which have no limitation of the hours of operation). This "limitation" is hardly worthy of the name, does not "clearly negate" the issue by any standard, and does not evidence that the Village took the requisite "hard look" at the issues the Village Planners themselves acknowledged.

174. To the extent that same can be divined in the 1/9/19 FEAF, the House of Worship Law will result in no significant adverse impact on the environment vis-à-vis transportation because (a) Airmont and Wesley Hills have "similar" house of worship laws and therefore, the Village Planners argue, "we might predict that the Village of Chestnut Ridge might support about 13 places of worship;" (b) based upon purported "interviews with elected officials and building department staff" in Airmont and Wesley Hills (the names, dates, and details of which are not disclosed), the "smaller scale worship places," i.e., RGPs and NPWs, "will not

draw significant participation from those residing outside of Chestnut Ridge"; and (c) there are some restrictions upon off-site parking for RGPs. *1/9/19 FEAF at 8-9.*

175. Under no reading of the law could the above be regarded as taking a "hard look" at the area of transportation or a "reasoned elaboration" for the determination made by the Village.

176. To begin with, aside from the assurances of the Village's Planners, no documentary evidence whatsoever is presented that Airmont and Wesley Hills have "similar" house of worship laws and "similar" populations. There is no comparison between the House of Worship Law and the corresponding zoning in Airmont and Wesley Hills. No demographic data is presented, comparing the Airmont and Wesley Hills' population to that of the Village, particularly the current and projected Orthodox Jewish population that this House of Worship Law (despite the Village's feeble attempts to claim religious neutrality) clearly seeks to serve.

177. The very choice of Airmont and Wesley Hills as comparable to the Village is not evidence based. To select a couple of communities that you feel will support your position best is the antithesis of objective analysis.

178. The statement that "we might predict that the Village of Chestnut Ridge might support about 13 places of worship" is simply a guess, supported by "evidence" that is, taken in the most generous light, anecdotal at best.

179. The use as evidence of purported undated interviews with unnamed "elected officials and building department staff" which purportedly demonstrates that RGPs and NPWs will not "draw significant participation" from outside the Village is truly unworthy of comment. It is the functional equivalent of "someone once told me . . ."

180. With regard to consistency with community plans, the Village Planners acknowledged that the House of Worship Law's "land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s)." *10/26/18 Nelson Memorandum at 2*; *1/9/19 FEAF: Part 2 at 10.*

181. The Village's Planners explained:

> The Zoning Code of the Village of Chestnut Ridge serves as its "well-considered plan" in compliance with state law. The Village does not have any statutorily adopted overall land use plan or comprehensive plan. The proposed action may allow new uses involving gatherings or worship services that are compatible with residences and part of a residential neighborhood fabric, but are not strictly residential uses, in contrast to surrounding homes. Concerns have been raised that Places of Worship and Gathering Places may have more parking spaces and walkways on-site as compared to a single-family home. Access ramps or lighting with such uses may be larger or more intense than usually found in residential areas. The size and bulk of buildings housing places of worship or gathering places may be somewhat larger than homes in the surrounding area."

10/26/18 Nelson Memorandum at 2.

182. The 1/9/19 FEAF does discuss the above issues identified by the Village's Planners in the 10/26/18 Nelson Memorandum, although it does so only in the discussion of impact upon community character.[36]

183. The sole stated bases for determining that the House of Worship Law will result in no significant adverse impact on the environment vis-à-vis consistency with community plans are (a) the needs of the Village's residents are changing; and (b) RLUIPA requires it.

184. The basis for determining that the needs of the Village's residents are changing is not set forth in the 1/9/19 FEAF, nor is it explicitly stated in the Resolution, although reference is made to a "petition" submitted by Brooker Engineering on or about November 1, 2017, which

[36] See discussion *infra.*

attested to the need for Orthodox Jews to have additional places of worship within walking distance of their homes. *See Resolution, 1.*

185. The "changing needs" of the Village's residents, a subjective determination without any objective indicia of validity, does not meet the standard in Merson and, therefore, does not obviate the need for the preparation of an EIS thereupon.

186. With regard to consistency with community character, the Village's Planners stated that "the proposed project is inconsistent with the existing community character." *10/26/18 Nelson Memorandum at 2*; *1/9/19 FEAF: Part 2 at 9.*

187. The Village Planners explained:

> "The proposed action may allow new uses involving gatherings or worship services that are compatible with residences and part of a residential neighborhood fabric, but are not strictly residential uses, in contrast to surrounding homes. Concerns have been raised that Places of Worship and Gathering Places may have more parking spaces and walkways on-site as compared to a single-family home. Access ramps or lighting with such uses may be larger or more intense than usually found in residential areas. The size and bulk of buildings housing places of worship or gathering places may be somewhat larger than homes in the surrounding neighborhood. Some noise impacts may occur as people leave or enter vehicles, and from conversations prior to participants entering the building. Concerns were also raised concerning noise emanating from activities within the building, including voices, music or dancing."

1/9/19 FEAF: Part 3 at 10.

188. In the 1/9/19 FEAF, the Village Planners identify the mitigation listed in ¶161 above and provide additional detail for each mitigating factor.

189. However, no "reasoned elaboration" whatsoever is provided for determining that the inclusion of non-residential uses, and additional parking spaces and walkways, will not result in a significant adverse environmental impact.

190. Furthermore, although the 1/9/19 FEAF approvingly cites the "use of bulk controls" as mitigation with regard to the larger size and bulk of RGPs and NPWs over single-family residences, these hardly meet the Merson standard of clearly negating the adverse environmental impact. For example, the 1/9/19 FEAF cites the limitation of NPWs to 10,000 square feet, which are permitted in every residential zone provided they meet the same minimum bulk requirements as a single-family residence in that zone.

191. As set forth in the Affidavit of Alan Sorensen, AICP dated March 21, 2019, 10,000 square feet is the typical size of a Family Dollar or Dollar General store. How the "use of bulk controls" in this circumstance negates the adverse environmental impact of placing an NPW in a neighborhood almost entirely composed of single-family houses is never elucidated.

192. With regard to the potential impact of the House of Worship Law on "noise, odor, and light," the Village is of two minds.

193. On the one hand, in response to the question as to whether "[t]he proposed action may result in an increase in noise, odors, or outdoor lighting," Part 2 of the 10/26/18 and 1/9/19 FEAFs explicitly answers "no."

194. However, the Village Planners specifically acknowledge the impact of increased noise in Part 3 of the 1/9/19 FEAF in identifying the potential significant adverse environmental impacts upon consistency with community character. Once again, the factors identified which purportedly mitigate the adverse environmental impact of increased noise, that of occupancy controls, limitations on the hours of operation, and limitations on accessory uses do not meet the Merson standard and do not, therefore, obviate the need for an EIS.

195. Once again, permitting operation on a lot meeting the minimum size for a single-family residence for ***up to 49 people for a RGP or, as set forth in the Sorensen Affidavit, up to***

500 people for a NPW, seven days a week, 365 days a year, except during the hours of 12:00a.m. and 6:00a.m. (subject to the exception for "non-regularly scheduled" activities, which have no limitation of the hours of operation) does not clearly negate the adverse environmental impact of increased noise.

196. The notion that limitations on accessory uses would meet the Merson standard for increased noise is similarly ludicrous. NPWs, it should be recalled, may include "classrooms, social halls, administrative offices, bath and shower facilities, gymnasiums and indoor recreation facilities." Preventing NPWs from, for example, establishing a school on-site (unless same meets the "standards for an additional principal use") hardly qualifies as clearly negating the significant adverse environmental impact of increased noise.

197. To the extent discernable in the 1/9/19 FEAF, the bases for determining that the House of Worship Law will result in no significant adverse impact on the environment vis-à-vis impacts on consistency with community character are: (a) "federal agencies and courts that review local zoning codes presume that places of worship are inherently beneficial and belong in residential neighborhoods"; and (b) conditional use permit controls will mitigate the impacts.

198. With regard to the notion that places of worship are inherently beneficial, this argument is clearly inapplicable to RGPs, which are inclusive of, but explicitly unaffiliated with religious worship. As detailed above, the notion of "Residential Places of Worship" was explicitly excised from a prior, early draft of the House of Worship Law in lieu of the current RGPs, which apply to all gatherings, regardless of purpose.

199. With regard to NPWs, the assertion that they are regarded as inherently beneficial neither obviates the significant adverse environmental impact they have upon consistency with

community character, as acknowledged by the Village Planners themselves, nor mitigates same to the level required by Merson.

200. As set forth in detail *supra*, reliance upon conditional use permit controls to mitigate the impact of the House of Worship Law upon consistency with community character is impermissible as improper segmentation and also does not meet the Merson standard, as such controls do not clearly negate the continued potentiality of the adverse effects upon consistency of community character of the House of Worship Law.

201. Therefore, the decision to issue the Neg Dec should be deemed arbitrary and capricious, and the House of Worship Law should be declared null and void for failure to comply with the requirement that the Village take a "hard look" at the relevant areas of environmental concern and provide a "reasoned elaboration" of the basis for its determination.

AS AND FOR A FOURTH CAUSE OF ACTION AND CLAIM FOR REVIEW

The House of Worship Law is null and void due to failure to comply with General Municipal Law 239

202. General Municipal Law ("GML") 239-m requires, among other proposed actions, that the adoption or amendment of a zoning ordinance or local law must be referred to the county planning agency for review and comment before taking final action thereupon. Failure to comply with General Municipal Law 239-m renders the legislative act at issue null and void. See Ernalex Const. Realty Corp. v. City of Glen Cove, 256 A.D.2d 336, 338 (2nd Dep't 1998) ("The alleged failure to comply with the referral provisions of the statute is not a mere procedural irregularity but is rather a jurisdictional defect involving the validity of a legislative act.")

203. As set forth *supra*, the proposed House of Worship Law was referred to RC Planning with an acknowledged "received" date thereupon of February 23, 2018.

204. In their 3/26/18 GML Review, RC Planning recommended, *inter alia*, the following modification to the House of Worship Law:

> "4. In order to ensure the safety of pedestrians, off-site parking for residential houses of worship must be subject to the availability of sidewalks or suitable walkways between the subject properties."

205. This modification was not adopted by the Village in the House of Worship Law.

206. General Municipal Law 239-m provides that:

> "5. Extraordinary vote upon recommendation of modification or disapproval. If such county planning agency or regional planning council recommends modification or disapproval of a proposed action, the referring body shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof."

207. Upon information and belief, the Village never voted to override the recommendation of RC Planning in its 3/26/18 GML Review. Therefore, the House of Worship Law was jurisdictionally defective. See ee Ernalex Const. Realty Corp. v. City of Glen Cove, 256 A.D.2d at 338.

208. Pursuant to GML 239-m, referrals to the county planning agency must be accompanied by a "full statement of such proposed action" which is defined, in relevant part, in the statute as follows:

> "The term 'full statement of such proposed action' shall mean all materials required by and submitted to the referring body as an application on a proposed action, including a completed environmental assessment form and all other materials required by such referring body in order to make its determination of significance pursuant to the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. When the proposed action referred is the adoption or amendment of a zoning ordinance or local law, "full statement of such proposed action" shall also include the complete text of the proposed ordinance or local law as well as all existing provisions to be affected thereby, if any, if not already in the possession of the county planning agency or regional planning council."

GML §239-m (c).

209. The Resolution states that:

> "WHEREAS, on or about September 18, 2018 the second draft of the proposed local law was resubmitted to the Rockland County Planning Department for further comment pursuant to the relevant provisions of the General Municipal Law . . ."

210. Upon information and belief, no additional submissions were made to the Rockland County Department of Planning after September 18, 2018.

211. The Resolution confirms that the first FEAF was completed on or about October 26, 2018 and that the second FEAF was completed on or about January 9, 2019.

212. As the FEAFs were not completed before the submission of the second draft of the House of Worship Law to the Rockland County Planning Department, the Village failed to provide the Rockland County Department of Planning with a "full statement" of the House of Worship Law. Failure to provide a "full statement" of the proposed action as required under the GML renders the proposed action null and void. See LCS Realty Co. v. Inc. Vill. of Roslyn, 273 A.D.2d 474, 475, 710 N.Y.S.2d 605, 605 (2nd Dep't 2000) ("After referral by the Village, the NCPC should have been in possession of all of the materials which the Village needed in order to pass a new zoning resolution, including the final version and complete text of the proposed new zoning law and the final generic environmental impact statement. However, it is clear that the NCPC did not have these materials for the requisite 30–day period before the Village acted and adopted the subject zoning law. Under such circumstances, the Village did not comply with General Municipal Law § 239–m and, as a consequence, Local Laws, 1997, No. 4 of the Incorporated Village of Roslyn and the Comprehensive Master Plan were improperly adopted and are void.").

213. The Resolution further confirms that there were several subsequent drafts of the House of Worship Law after September 18, 2018. Copies of drafts no. 3 and 5, dated December 27, 2018 and January 16, 2019 are annexed hereto as Exhibits "27" and "28," respectively.

214. The pre-September 18, 2018 drafts of the House of Worship Law deviated significantly from the final text of the House of Worship Law as passed. If subsequent drafts of a proposed action deviate significantly from prior drafts, they must be referred again to the county planning agency pursuant to GML 239. Calverton Manor, LLC v. Town of Riverhead, 160 A.D.3d 842, 845 (2nd Dep't) ("Where changes are made to a proposed action following [GML 239] referral, a new referral is not required if 'the particulars of the amendment were embraced within the original referral.' . . . Here, the TDR law as enacted contained substantial modifications that warranted a new referral . . . the Town Board's failure to comply with the referral requirements of General Municipal Law §239-m constitutes a 'jurisdictional defect.'").

215. Given the facts set forth in the Resolution, the complete text of the House of Worship Law as well as all existing provisions to be affected thereby could not have been submitted to the Rockland County Department of Planning before final action was taken by the Village thereupon.

216. As Respondents failed to comply with General Municipal Law 239-m, the House of Worship Law is null and void.

217. **AS AND FOR A FIFTH CAUSE OF ACTION AND CLAIM FOR REVIEW**

The House of Worship Law is null and void as it was not passed in accordance with Village of Chestnut Ridge local law Article XVII: Amendments §§1 and 2

218. Chestnut Ridge local law Article XVII sets forth the procedure for amendment of the zoning law for the Village. Article XVII provides, in relevant part:

> 1. Amendment of chapter; report from Planning Board.
> This local law, or any part thereof, may be amended, supplemented or repealed from time to time by the Village Board on its own motion or upon recommendation by the Planning Board or by petition.
>
> . . .

> 2. Petitions.
> Petitions to amend this local law shall be in writing and shall contain a description of the property affected, together with such other information as the Village Board shall require. Such petitions shall include the names and addresses of all owners of real property within five hundred (500) feet of the property affected or any other contiguous property of a petitioner in the same ownership. All petitions for amendment of this local law, excepting those submitted by the Planning Board or on motion of the Village Board, shall be accompanied by a fee in accordance with the Standard Schedule of Fees of the Village of Chestnut Ridge.

A copy Chestnut Ridge local law Article XVII is annexed hereto as Exhibit "29."

219. The Resolution unequivocally states that the House of Worship Law, as an amendment to the zoning code for the Village, was initiated by a "written petition submitted by Brooker Engineering, PLLC, in letter form, submitted on behalf of the Orthodox Jewish Coalition of Chestnut Ridge." *Resolution at 1.*

220. The Village continues:

> "WHEREAS, as a result of additional oral testimony, and written correspondence and communications submitted to the Village in connection with the Village Board's eventual deliberation and consideration of this local law (some of which are referred to hereinbelow), its is apparent that some members of the OJC are in fact residents of the Village of Chestnut Ridge, as was asserted in the Brooker Engineering letter of November 1, 2017.
>
> WHEREAS, the Chestnut Ridge Zoning Code Article XVII, entitled " Amendments", provides that "This local law, or any part thereof, may be amended, supplemented or repealed from time to time by the Village Board on its own motion or upon recommendation of the Planning board, or by petition"; thus, the Village Board finds that <u>any</u> resident of the Village of Chestnut Ridge have (sic) the right under existing Village law, at any time, either before or after the November 1st Brooker Engineering letter, to petition the Village Board of Trustees to amend the Zoning law."

221. Although far from clear, it appears that the Village is arguing (a) that the November 1, 2017 Brooker Engineering letter ("11/1/17 Brooker letter") is a petition under Chestnut Ridge Zoning Code Article XVII; (b) any resident of the Village has the right to

petition for amendment of the zoning code; and (c) therefore, any request by any resident of the Village to amend the zoning code constitutes a petition under Article XVII; or, in the alternative (d) multiple unspecified "petitions" were, in fact, submitted to the Village both before and after the 11/1/17 Brooker letter. A copy of the 11/1/17 Brooker letter is annexed hereto as Exhibit "30."

222. The interpretation of a zoning law starts with the plain language thereof. See Balbuena v. IDR Realty, LLC, 6 NY3d 338, 356 (Ct of Appls 2006); Matter of Theroux v. Reilly, 1 NY3d 232, 239 (Ct of Appls 2003) ("When interpreting a statute, we turn first to the text as the best evidence of the Legislature's intent."); Riley v. County of Broome, 95 NY2d 455, 463 (Ct of Appls 2000) ("Of course, the words of the stature are the best evidence of the Legislature's intent.").

223. The Village Code does not define "petition." See Village of Chestnut Ridge Article XVIII.

224. In the absence of a specific definition for a given word, the Village law provides as follows:

> " Word Usage 1. General word usage. A. Unless otherwise listed below, the numbers, abbreviations, terms and words used herein shall have the meanings of common usage as set forth in the latest edition of Webster's New Collegiate Dictionary. Terms of law shall have the meanings as set forth in the latest edition of Black's Law Dictionary."

A copy of page "1" of Article XVIII is annexed hereto as Exhibit "31."

225. According to the latest edition of Webster's New Collegiate Dictionary, "Petition" means:

> "1: an earnest request: entreaty
> 2a: a formal written request made to an official person or organized body (such as a court)
> b: a document embodying such a formal written request

(cont.)
3: something asked or requested"

https://www.merriam-webster.com/dictionary/petition. A copy of the aforementioned page is annexed hereto as Exhibit "32."

226. Notwithstanding (1) and (3) above, it is clear that the definition of "petition" within Article XVII is that identified above as (2a) and (b). Article XVII §2 provides that said petitions will (i) be in writing; (ii) contain a description of the property affected; (iii) contain the names and addresses of all owners of real property within five hundred (500) feet of the property affected or any other contiguous property of a petitioner in the same ownership;[37] and (iv) be accompanied by a fee.

227. The 11/1/17 Brooker letter did not refer to Article XVII, did not describe itself as a petition, was not signed by any resident of the Village, did not identify any resident of the Village, and was not accompanied by any fee. The 11/1/17 Brooker letter is just that: a letter, nothing more.

228. The Village simply seeks to call what is clearly a letter a petition *post hac* in order meet the necessary procedural requirements for amending the zoning law.

229. This is all the more apparent in the frankly bizarre corollary to the "letter is a petition" argument; namely, the statement that "any resident" has the right "at any time, either before or after the November 1st Brooker Engineering letter, to petition the Village Board of Trustees to amend the Zoning law."

[37] It is conceded that any petition to amend the zoning law in as comprehensive and wide-ranging a manner as the House of Worship Law does could not reasonably be expected to "contain the names and addresses of all owners of real property within five hundred (500) feet of the property affected . . ." Such a concession, however, does not obviate the need for a petition under the law.

230. There is, of course, no dispute that any resident of the Village can petition the Village Board to change the zoning law at any time. However, they must, in fact, submit a formal petition, as required by the local law.

231. The implication of the Village in the Resolution seems to be that, if it is determined that the 11/1/17 Brooker letter is not a petition (which it clearly is not), then some other unidentified request(s) before and/or after the 11/1/17 Brooker letter should be deemed petitions. If the position that any such unidentified request can be or not be a petition, depending on what one needs at the moment, then the explicit requirement in the law for a petition is utterly meaningless.

232. No argument need be made that this position is the very definition of arbitrary and capricious.

233. Given the above, the House of Worship Law is null and void as it was not passed in accordance with Village of Chestnut Ridge local law Article XVII: Amendments §§1 and 2.

AS AND FOR A SIXTH CAUSE OF ACTION AND CLAIM FOR REVIEW

The House of Worship Law is null and void as it was passed in reliance upon a municipal resolution that contained materially false and derogatory information

234. Included in the Resolution is the following comments regarding the undersigned, to wit:

> "WHEREAS, a citizen group also retained two attorneys who spoke and submitted written comments at the June 28, 2018 Public Hearing, one of whom stated to the Village Board that he intended to address "both the audience and the Board",[38] and identified his clients as "good Americans". . . [and] espoused conspiracy theories as to the genesis of the proposed law."

[38] The undersigned is truly at a loss as to how to address the quoted language. While, on its face, the quoting of the undersigned as "addressing both the Board and the audience" seems innocuous, it seems apparent that the author of the Resolution is implying some improper motive to this statement. As the undersigned cannot discern the purported improper motive, no further comment will be made.

235. The quotation of the undersigned as identifying CUPON of Chestnut Ridge as "good Americans" seems to suggest some nefarious intent on the part of the undersigned, perhaps suggesting that those that do not agree with the undersigned's clients are not "good Americans." The choice to selectively quote these words, as if the undersigned's choice of words carried some hidden meaning is, at the very least, improper.

236. The statement of the undersigned, in context, was as follows:

> "MR. MOGEL: I'm addressing both the audience and the board. My name is Steven Mogel and I represent CUPON. Who is CUPON? CUPON Chestnut Ridge are your neighbors, they are your constituents and they're people that love this Village. They are people, like all good American should, are people who believe in equal treatment for everyone regardless of race, creed, color or religion.
>
> (Crowd applauds)
> MR. MOGEL: There (sic) people who hold sacred the idea of freedom of religion as all good Americans should.
>
> (Crowd applauds)
>
> MR. MOGEL: Religious worship or the absence of religious worship should be honored and protected and it is protected in the Constitution and Federal and State Law and people of good conscious (sic) also protect it. However, the rights of those who wish to worship in a particular way do not trump the needs of everyone else.
>
> (Crowd applauds)
>
> MR. MOGEL: They don't trump the needs of everyone who chooses to worship a different way or not to worship at all. CUPON is concerned that this basic American view is not being adequately advocated by its representatives.
>
> A VOICE: Yes."

6/28/19 Transcript at 29-30.

237. As should be abundantly clear, there is nothing whatsoever nefarious or untoward about the undersigned's comments, the selective and out of context quotation in the Resolution aside.

238. Far more troubling is the subsequent comment that the undersigned "espoused conspiracy theories as to the genesis of the proposed law." This comment is demonstrably false, unethical, and defamatory.

239. The language of the undersigned which it is alleged constitutes a "conspiracy theory" is as follows:

> MR. MOGEL: The law that was presented at the Village Board meeting on February 22, 2018 was added to the agenda with less than two days notice. Even though it was the product of negotiations for an unknown period of time between Board Members, the Orthodox Jewish Coalition and Brooker Engineering, which was hired by the Orthodox Jewish Coalition, and no one else. No one else. FOIL requests made to the Village show that there are no records of the meetings, we don't know who attended on behalf of the Board, we don't know if it complies with the open meetings law, but what we do know is that almost two weeks before the February 22nd meeting a memorandum was prepared and presented to the Village Board that set forth this proposed law, why then only two days notice was this dropped onto the agenda?
>
> A VOICE: Where's the transparency?
>
> MR. MOGEL: As noted by the Planning Board in number three of it's (sic) May 29th comments, "we question why only input of one religious organization, the Orthodox Jewish Coalition, was considered in connection with the drafting of the proposed local law. The proposed law is designed to favor one religious institution over another. We are concerned that it maybe (sic) unconstitutional and prohibited due to the established (sic) laws of the First Amendments (sic)."

240. Annexed to the instant petition is:

a. the sworn statement that the House of Worship Law was placed on the February 22, 2018 Village Board agenda less than two days before the February 22, 2018 Village Board meeting; and

b. billing statements showing that the Village Planners reviewed the "OJC law," met with Brooker Engineering, and met with Respondent Presti regarding the "OJC law" beginning approximately (6) months before consideration of the House of Worship Law was ever disclosed to the public on February 22, 2018; and

c. the results of a FOIL request, wherein the Village Clerk attested, in writing, that no records, minutes, or notes exist from any of the meetings between the OJC, the Village Board, Brooker Engineering, or the Village Planners, and that no records exist as to who was present, what they discussed, or how many times they met.

241. The undersigned was not "espousing conspiracy theories," but reporting facts, each of which was documented and none of which was ever denied by the Village. Falsely accusing the undersigned of such behavior is beyond all bounds of propriety.

242. Given that the Resolution is predicated, in part, upon this demonstrably false and defamatory statement, the House of Worship Law should be declared null and void.

CONCLUSION

243. Given the above, we respectfully request that the Court vacate and annul the Neg Dec and issue a declaratory judgment as specified herein.

WHEREFORE, on behalf of the Petitioners-Plaintiffs HILDA KOGUT, ROBERT E. ASSELBERGS and MAGALI DUPUY, I request a Judgment and Order:

(a) Vacating and annulling the Negative Declaration under SEQRA issued by the Board of Trustees of the Village of Chestnut Ridge on January 15, 2019 pertaining to a local law entitled "A Local Law Amending Local Law No. 20 of 1987, the Zoning Law of the Village of Chestnut Ridge, with regards to Residential Places of Assembly and Houses of Worship" ("House of Worship Law") as same was arbitrary and capricious; and

(b) Declaring that the House of Worship Law is null and void as the lead agency failed to comply with the requisite procedures under SEQRA; and

(c) Declaring that the House of Worship Law is null and void for failure to comply with General Municipal Law 239; and

(d) Declaring that the House of Worship Law is null and void as it was not passed in accordance with Village of Chestnut Ridge local law Article XVII: Amendments, §1 and 2; and

(e) Declaring that the House of Worship Law is null and void as it is was passed in reliance upon a municipal resolution that contained materially false information.

(f) Such other and further relief as, to the Court, may seem just, proper, and equitable.

Dated: March 21, 2019
Monticello, NY

STEVEN N. MOGEL
Attorney at Law
Attorney for Petitioners-Plaintiffs
457 Broadway, STE 16A
Monticello, NY 12701

ATTORNEY VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF SULLIVAN)

STEVEN N. MOGEL being duly sworn, deposes and says that I am counsel to the Petitioners-Plaintiffs in this action, HILDA KOGUT, ROBERT E. ASSELBERGS, and MAGALI DUPUY, and that I have read the attached Verified Petition herein and all the contents thereof are true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true. The grounds of my information and the sources of my belief are conversations with my client and review of his records and files. I am making this affidavit pursuant to CPLR §3020(d)(3) since the Petitioners-Plaintiffs do not reside in the same county where I maintain my office.

STEVEN N. MOGEL

Sworn to before me this 21st
day of March, 2019.

NOTARY PUBLIC

KAREN M. HOLLOWAY
Notary Public, State of New York
Reg. No. 01HO6366897
Qualified in Sullivan County
Commission Expires November 6, 20___